Calendar No. 129

84TH CONGRESS, 1st Session | SENATE | REPORT No. 126

AUTHORIZING THE SECRETARY OF THE ARMY TO CONTRACT WITH THE CITY OF McCORMICK, S. C., FOR THE SALE OF WATER FROM CLARK HILL RESERVOIR

MARCH 30 (legislative day, MARCH 10), 1955.—Ordered to be printed

Mr. CHAVEZ, from the Committee on Public Works, submitted the following

REPORT

[To accompany S. 1217]

The Committee on Public Works, to which was referred the bill (S. 1217) to authorize the Secretary of the Army to contract with the City of McCormick, S. C., for the sale of water from Clark Hill Reservoir, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is indicated in the bill as reported by line type and italics, as follows:

Strike out all of section 1 after the enacting clause, and insert the following new section in lieu thereof:

That the Secretary of the Army is hereby authorized to contract with the city of McCormick, South Carolina, for the use of storage space in Clark Hill Reservoir for the purpose of providing said city a regulated water supply in an amount of not to exceed six hundred acre-feet annually; *Provided*, That such contract shall provide for repayment of allocable costs in not to exceed fifty years from the date of beginning the use of water, and payments of construction costs shall include interest on unamortized balance at a rate equal to the average rate paid by the United States on long term loans. He is further authorized to grant to the city of McCormick at no cost an easement over Government lands at Clark Hill for the sole purpose of constructing necessary pipelines and a pumping station to obtain such water.

The purpose of this bill is to authorize the Secretary of the Army to contract with the city of McCormick, S. C., upon certain terms and for a period of not to exceed 50 years for use of storage space in Clark Hill Reservoir not to exceed 600 acre-feet annually, for the purpose of providing that city a dependable source for municipal water supply. The Secretary would be further authorized to grant to the city at no cost an easement over Government land for construc-

tion of necessary pipelines and a pumping station. All moneys received would be deposited in the Treasury of the United States.

Clark Hill Reservoir was authorized by the Flood Control Act of 1944 as a multiple-purpose project on the Savannah River 22 miles upstream from Augusta, Ga. The reservoir has a total storage capacity of 2,900,000 acre-feet, of which 390,000 acre-feet is reserved for flood control and 1,340,000 acre-feet for development of hydroelectric power. The power installation will total 280,000 kilowatts. The project is essentially complete at a cost of about $78 million, and is in operation.

McCormick, S. C., is the county seat of McCormick County, located about 7 miles northeast of the Savannah River and 4 miles east of the Little River Arm of Clark Hill Reservoir. McCormick had a population of 1,744 in 1950. The present water supply for the town is extremely limited, and during drought periods becomes critical. A dependable source of water supply is available in the nearby Clark Hill Reservoir.

Section 6 of the Flood Control Act of 1944 authorizes the Secretary of the Army to contract with States, municipalities, private concerns, or individuals, at such prices and on such terms as he may deem reasonable, for domestic and industrial uses for surplus water that may be available at any reservoir under the control of the Department of the Army. Since the water to be used by the city of McCormick is not surplus water, enactment of this legislation is necessary to permit use of the storage space by the city.

The committee is aware of the acute water shortages that have occurred in various sections of the Nation in recent years, particularly where surface sources are depended upon for water supply. The committee further appreciates the value of water stored in Federal reservoir projects, especially for domestic and industrial purposes, and approves of use for such purposes when it will not interfere with the primary purposes of the project.

The Department of the Army states that the charges for storage uses incident to the regular uses of the reservoir are normally based on the costs of constructing and operating such facilities. The Bureau of the Budget believes that in order that each purpose served by the Clark Hill project may be treated fairly, the costs of the project should be allocated equitably among the several purposes served, and all costs allocated to provision of municipal water supply should be repaid by the beneficiaries thereof.

The committee concurs in the suggestions of the Federal agencies. It realizes that in this case the use of storage space for municipal water supply purposes will be at the expense of development of hydroelectric power, for which cost allocations have already been made, and that the water supply reservation is a very small portion of this large reservoir.

Comments of the Department of the Army and the Bureau of the Budget are shown in the following communications:

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EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., March 23, 1955.

Hon. DENNIS CHAVEZ,
Chairman, Committee on Public Works, United States Senate,
Senate Office Building, Washington, D. C.

MY DEAR MR. CHAIRMAN: Your letter of February 26 requested the views of the Bureau of the Budget on S. 1217, a bill to authorize the Secretary of the Army to contract with the city of McCormick, S. C., for the sale of water from Clark Hill Reservoir

The purpose of the bill is to authorize the Secretary of the Army to contract with the city of McCormick, S. C., upon such terms and for such period, not to exceed 50 years, as he may deem reasonable, for the sale of not to exceed 600 acre-feet of water annually from the Clark Hill Reservoir, and to grant to the city without cost an easement over Government lands for the purpose of constructing necessary pipelines and a pumping station.

Provision of an assured water supply from the reservoir would involve the use of a part of the storage facilities of the Clark Hill project, at the expense of the other purposes served by the project. In order that each purpose served by the Clark Hill project may be treated fairly, the costs of the Clark Hill project should be allocated equitably among the several purposes served, and all costs allocated to provision of municipal water supply should be repaid by the beneficiaries thereof.

The Bureau of the Budget would have no objection to the enactment of S. 1217 if amended to require that the contract with the city of McCormick call for payment of an appropriate share of the operation and maintenance costs of the reservoir, together with amortization over the period of the contract, with interest at the Federal long-term borrowing rate, of that portion of the costs of the Clark Hill project allocated to providing water supply for the city.

Sincerely yours,

DONALD R. BELCHER,
Assistant Director.

DEPARTMENT OF THE ARMY,
Washington, D. C., March 28, 1955.

Hon. DENNIS CHAVEZ,
Chairman, Committee on Public Works,
United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to S. 1217, 84th Congress, a bill to authorize the Secretary of the Army to contract with the city of McCormick, S. C., for the sale of water from Clark Hill Reservoir.

The Department of the Army has considered the above-mentioned bill. The purpose of the bill is to authorize the Secretary of the Army to contract with the city of McCormick, S. C., upon such terms and for such period, not to exceed 50 years, as he may deem reasonable, for the sale of not to exceed 600 acre-feet of water annually from the Clark Hill Reservoir. The Secretary would be further authorized to grant to the city at no cost an easement over Government lands for the purpose of constructing necessary pipelines and a pumping station.

During the recent drought, the water supply for McCormick has been almost depleted, and it has become apparent to the city officials that an additional and a more dependable supply is essential. A logical source of this supply is the Little River arm of the Clark Hill Reservoir.

The Flood Control Act of 1944 authorized the construction of the Clark Hill Reservoir for flood control, navigation and power purposes. The use of storage space in the reservoir for furnishing water to the city of McCormick will not interfere substantially with the primary purposes of the project. However, the Department of the Army cannot legally enter into a contract with the city pursuant to section 6 of the 1944 Flood Control Act, as reenacted by Public Law 360 of the 82d Congress, since that section applies only to "surplus" water, whereas there is actually no surplus water in the reservoir. Accordingly, enactment of legislation is necessary if water is to be supplied to the city of McCormick from the Clark Hill Reservoir.

Since the Department, in contracting for water supply as an incident to the operation of flood control and navigation projects under its jurisdiction, normally treats such transactions as involving the use of storage facilities of such projects

and the charges therefor are based on the costs of constructing and operating such facilities, it is recommended that the bill be revised as follows:

In line 6, page 1, delete the words "sale of" and insert: "use of storage space in the Clark Hill Reservoir for the purpose of providing said city a regulated water supply in an amount".

In lines 7 and 8, page 1, delete the language "from the Clark Hill Reservoir".

The Department of the Army has no objection to the enactment of S. 1217, provided the bill is revised as recommended above.

Enactment of this legislation would not result in any increased costs nor in any losses to the United States.

The Bureau of the Budget advises that, while there would be no objection to the submission of this report, enactment of S. 1217 would be without objection only if amended to require that the contract with the city of McCormick call for payment of an appropriate share of the operation and maintenance costs of the reservoir, together with amortization, over the period of the contract, with interest at the Federal long term borrowing rate, of that portion of the costs of the Clark Hill project allocated to providing water supply for the city.

Sincerely yours,

CHARLES FINUCANE,
Acting Secretary of the Army.

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Calendar No. 130

84TH CONGRESS, 1st Session } SENATE { REPORT No. 127

FOREIGN SERVICE ACT AMENDMENTS OF 1955

MARCH 30 (legislative day, MARCH 10).—Ordered to be printed

Mr. GEORGE, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany H. R. 4941]

The Committee on Foreign Relations, having had under consideration H. R. 4941 to amend the Foreign Service Act of 1946, as amended, reports that bill to the Senate without amendment and recommends that it do pass.

GENERAL PURPOSE OF BILL

The main purpose of the pending bill is to amend the Foreign Service Act of 1946 to make it possible to expand the Foreign Service officer corps from its present membership of about 1,600 officers to a strength of over 3,000 officers. This expansion is to be accomplished by enabling qualified officers in the Department of State (including its Foreign Service reserve and staff personnel) and a limited number of officers from other Government agencies to be appointed to the Foreign Service officer corps, after comprehensive examinations, at salaries generally equivalent to those they now receive as Government employees. In addition, the pending bill contains provisions relative to service at hardship posts, retirement, selection-out procedures, and educational allowances. The bill gives effect to recommendations made in 1954 by the Secretary of State's Public Committee on Personnel (the Wriston Committee).

The pending legislation does not authorize any increase in the total number of employees to be engaged in the foreign policy functions of the Government, but would make available to the Secretary of State a larger corps of officers that can be assigned for duty at home or abroad. The bill does not increase salaries although it is estimated that provisions relative to educational allowances, travel, retirement, and other benefits will cost approximately $1,290,000 annually.

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BACKGROUND

The Foreign Service Act of 1946 was designed to enable the Foreign Service to serve the interests of the United States abroad. From time to time since 1946 that act has been amended, but thus far no permanent amendments have been made to enable the expansion of the Foreign Service to meet the increased responsibilities of the United States in the conduct of its foreign relations.

Under the terms of the Foreign Service Act of 1946 and related legislation, employees engaged in foreign policy duties have fallen into the following categories:

PERSONNEL STRENGTH

(Department of State and Foreign Service employees as of February 28, 1955)

By category

Departmental employees:	
1. Officers (GS–7 and up)	2, 360
2. Clerical (GS–6 and below)	2, 509
	4, 869
Foreign Service employees:	
1. Chiefs of mission (noncareer)	34
2. Foreign Service officers	1, 573
3. Foreign Service reserve officers	233
4. Foreign Service staff officers (FSS–9 and above)	1, 597
5. Foreign Service clerical (FSS–10 and below)	2, 842
6. Aliens (employed abroad)	9, 371
	15, 650
Total American personnel	11, 148
Total aliens	9, 371
In the United States and abroad	20, 519

By location

	In United States	Overseas	Total
Departmental employees	4, 869		4, 869
Foreign Service:			
1. Chiefs of mission (noncareer)		34	34
2. Foreign Service officers	412	1, 161	1, 573
3. Foreign Service reserve officers	35	198	233
4. Foreign Service staff officers and employees	321	4, 118	4, 439
5. Aliens		9, 371	9, 371
Total	5, 637	14, 882	
Grand total, all personnel			20, 519

Despite the fact that most of the civil-service officers in the Department are intimately concerned with foreign policy matters, they are not obliged, and in many cases have had no opportunity, to serve overseas.

Foreign Service personnel, on the other hand, may be assigned to serve any place in the world.

A number of studies have been made of the desirability of integrating certain categories of departmental employees with the Foreign Service, thus increasing the number of officers available for assignment overseas and at the same time increasing the number of positions in

the Department of State which might be filled by officers with overseas experience, including members of the Foreign Service officer corps. In May 1954 a Public Committee on Personnel under the chairmanship of Henry M. Wriston recommended to the Secretary of State that steps be taken—

To integrate the personnel of the Department of State and of the Foreign Service, where their official functions converge, into a single administrative system, thus putting an end to the institutional separateness of these main functioning arms of United States diplomacy.

In order to make this recommendation effective, the Secretary found it desirable to seek authority from the Congress to enable him, after appropriate examination, to transfer departmental and Foreign Service staff and reserve officers into the Foreign Service officer corps at substantially the same salary they have been receiving.

Last year the Congress in Public Law 759 authorized the appointment to the Foreign Service officer corps by March 31, 1955, of not to exceed 500 officers to classes other than class 6, the lowest class in the Foreign Service officer corps, at other than the minimum salary for such classes. Although it would have been possible for the Secretary of State to have appointed these officers to the Foreign Service officer corps, under the terms of the Foreign Service Act of 1946, he would have been required to appoint them at the minimum salary in each class. This requirement has had the effect of restricting severely the number of qualified Department of State officers willing to accept appointment as Foreign Service officers. In some instances they would have been required to take salary cuts up to $1,600 per year.

Most of the appointments authorized by the legislation last year have now been made.

In January the Secretary of State proposed legislation designed to accomplish the following general purposes:

1. To permit appointments in classes FSO–1 to FSO–5 to salary steps above the minimum.
2. To make Foreign Service officers and reserve officers eligible to receive hardship post differentials which are now paid to staff corps officers and employees and civilian personnel of other Government agencies who are stationed abroad.
3. To permit the Secretary of State to waive the 4-year limit on the assignment of Foreign Service personnel to duty in the United States.
4. To establish a home service transfer allowance for Foreign Service personnel assigned to duty in the United States between tours of foreign duty.
5. To extend the selection-out system to Foreign Service officers of class 1.
6. To discontinue the existing provisions granting Foreign Service officers time-and-one-half credit toward retirement for service at unhealthful posts.
7. To make officers of other Government agencies eligible for lateral entry as Foreign Service officers.
8. To establish a basis for educational grants to defray part of the expenses of educating children of American parents stationed abroad.
9. To increase the maximum duration of Foreign Service reserve appointments to 5 years and to permit the Secretary of State to grant additional 2-year extensions of such appointments.
10. To permit the Secretary of State to negotiate reimbursements for Foreign Service personnel detailed to other Government agencies.
11. To limit the amount of gratuities paid Foreign Service officers in classes 4 and 5 who are selected out of the Service.
12. To authorize physical examinations, inoculations, and vaccinations to dependents of Foreign Service personnel.

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COMMITTEE ACTION

On March 22, 1955, the Committee on Foreign Relations held an open hearing to consider the Secretary's proposals which had been amended by the House Committee on Foreign Affairs and embodied in H. R. 4941. Testimony was received from Hon. Loy Henderson, Deputy Under Secretary of State for Administration. On March 29, 1955, the committee voted to report H. R. 4941 favorably to the Senate.

THE PENDING LEGISLATION

1. Lateral entry

Two provisions of the pending legislation are specifically related to the appointment of State Department officers to the Foreign Service at salaries generally equivalent to those they now receive.

Section 2, by amending section 413 of the Foreign Service Act, authorizes the Secretary of State to determine the basic salary which may be paid to persons appointed to the Foreign Service officer corps, taking into consideration their age, qualifications, and experience.

Section 4 amends section 517 of the Foreign Service Act to make it clear that not more than 1,250 persons who have not served in class 6 may be appointed as Foreign Service officers. Nominees must come from individuals who have served at least 4 years in a position of responsibility in a Government agency, except that if the employee has reached the age of 31 the requirement as to service may be reduced to 3 years. It is not necessary that this service be immediately prior to appointment as a Foreign Service officer although, except as noted below, appointments can be made only of those who were in fact employed in the Department of State (including its Foreign Service reserve or Foreign Service staff) on March 1, 1955. Provision is made, however, for not more than 40 persons not on the Department's rolls on March 1, 1955, to be permitted lateral entry into the Foreign Service officer corps.

In other words, of the 1,250 lateral appointments authorized, 1,210 are, in effect, restricted to persons who were employed in the Department of State (including its Foreign Service reserve and Foreign Service staff) on March 1, 1955. Such persons must, in addition, have completed either 3 or 4 years of service (depending upon their age) in an appropriate position of responsibility before they may be appointed as Foreign Service officers.

It is essential under the terms of this section, however, that lateral entrants among this group must have been actually or constructively employed by the Department on March 1, 1955. Departmental officers, or Foreign Service Reserve or Staff officers serving in the armed services on that date and who may be accorded restoration rights under the terms of the Selective Service Act of 1948, as amended, would, for example, be entitled to seek lateral entry within the 1,210 figure if otherwise eligible. The same would also be true with respect to officers who may on March 1 have been on detail to another Government agency or assigned to an educational institution.

It will be noted that section 517, as amended, will permit the lateral entry of not more than 40 officers who were not employed in the Department of State on March 1, 1955. This figure is designed to take care of former experienced Department of State officers with the required governmental service who may have been transferred to other

Government agencies before they could be examined for the Foreign Service and for a limited number of other persons with the required service who may be especially qualified for direct admission to the Foreign Service.

In this connection it should be noted that existing legislation authorizes the Secretary of State to continue to employ qualified individuals as members of the Foreign Service reserve, as distinct from the Foreign Service officer corps, even though they may not have had the 3 or 4 years' experience with a governmental agency which is a prerequisite to admission to the Foreign Service officer corps.

2. Hardship provisions

Sections 3 and 9 of the pending legislation concern service at foreign posts involving extraordinarily difficult living conditions—the so-called hardship posts. Section 3 amends section 443 of the Foreign Service Act to permit the President to prescribe a salary differential for such posts not to exceed 25 percent of the basic salary of Foreign Service officers and reserve officers assigned to such posts. Heretofore, Foreign Service officers have been given credit toward retirement at the rate of 1½ years for each year of service at unhealthful posts. Section 3 read in conjunction with section 9 has the effect of giving Foreign Service officers serving at unhealthful posts an option as to whether they wish to take credit for such service either in terms of a salary differential or in terms of credit toward retirement. Section 853 authorizes the President to designate a list of places found to be unhealthful. Should conditions at such posts improve, he may, of course, remove them from such list.

3. Allowances

Sections 10, 11, and 12 of the bill relate to allowances and benefits for Foreign Service personnel or their dependents. Section 10, which amends section 901, paragraph 2, of the Foreign Service Act, will authorize Foreign Service personnel who are assigned to the United States for a tour of duty to receive an allowance to enable them to meet expenses necessary for transfer to home assignment. At the present time such an allowance is provided only when employees transfer to new posts in foreign countries, even though transfers to the United States may be just as costly. This home service transfer allowance would be paid only to employees serving in the United States between assignments to posts abroad.

Section 10 of the bill also authorizes the payment of extraordinary and necessary expenses encountered by Foreign Service personnel in providing adequate elementary and secondary education for dependents. It is important that Americans serving abroad in the Foreign Service be able to provide an education for their children substantially equivalent to that which children receive under the public-school system of the United States. This provision of the bill does not go beyond the payment of allowances to cover expenses encountered by Foreign Service personnel in obtaining educational services which are ordinarily provided without charge by public schools in the United States. For example, if the only adequate American-type school available in a foreign country to a child of a Foreign Service officer were one which charges tuition, this provision would authorize the payment of an allowance to cover the cost of such tuition.

Section 11 authorizes the payment of a travel allowance for one trip to the United States and return during high school, and another during college.

Finally, section 12 amends section 943 of existing law so as to include dependents of Foreign Service employees among those authorized to receive periodic physical examinations, inoculations, and vaccinations at Government expense.

4. Selection-out

Section 7 of the pending bill extends selection-out procedures now found in the Foreign Service Act to class 1 officers who have not heretofore been covered by such procedures. It will have the effect of making it possible for the Service to select out certain officers in class 1 whose performance does not meet an appropriate standard before they have reached mandatory retirement age.

Amendment of section 634 of the 1946 act limits the amount of termination pay that can be given to officers of classes 4 and 5 who are selected out under the provisions of the act.

5. Other provisions

Section 5 of the bill increases from 4 to 5 years the period during which an individual may serve as a Foreign Service Reserve officer. It has been found that 4 years' service is inconvenient for administrative purposes and inadequate to enable the Government to derive the optimum benefit from the service of Reserve officers.

Section 6 will authorize the Secretary of State, in special circumstances, to permit Foreign Service personnel assigned to home duty in the Department of State or to duty in another Government agency to extend the existing 4-year limit on such service for an additional 4 years.

This section also authorizes the Secretary of State to enter into agreements with the heads of other Government agencies regarding reimbursement for salaries paid to Foreign Service personnel who may be on temporary assignment to such other agencies.

Section 8 will permit Foreign Service officers who have served in the Armed Forces to obtain credit for such service without contribution to the Foreign Service retirement system on an equal basis with civil-service employees under the civil service-retirement system. This means that there will be limited refunds to those officers who are covered by the Foreign Service retirement system and have been required to make special contributions to that system in the past because they could not receive free credit for periods of active military service prior to becoming a Foreign Service officer.

COSTS

The Department of State has submitted the following estimates of the cost of putting the proposed amendment into effect:

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	Estimated cost	
	1955	1956
1. Sec. 413. Lateral appointments of Foreign Service officers above the minimum rate of the class to which appointed. *Comment.*—The Foreign Service Act of 1946, which provided that appointments to classes 1 to 5 be made at the minimum salary rate of the class, was amended by Public Law 759, 83d Cong., to permit the appointment of 200 officers at rates above the minimum up to Mar. 31, 1955. The estimated cost of the proposed amendment will be $5,000 for the period Apr. 1 1955 to July 1, 1955 and $75,000 for fiscal year 1956.	$5,000	$75,000
2. Sec. 443. Payment of salary differentials to Foreign Service officers and Foreign Service Reserve officers. *Comment.*—The estimated cost of this amendment is based on a count of Foreign Service officers and Reserve Corps officers at differential post, multiplied by the percent differential received by each; namely 286 Foreign Service officers and 31 Reserve officers. For fiscal 1955 the annual cost is reduced by 75 percent.	120,000	480,000
3. Sec. 901 (2) (ii). Home service transfer allowance. *Comment.*—Assumed average cost is based on an analysis of average size of each Foreign Service family, costs of hotel room accommodations in Washington as determined by Bureau of Labor Statistics, the average intra- and interzone transfer allowance and the assumption that 100 assignments to the United States will be made during the balance of fiscal 1955 and 400 each year thereafter.	50,000	200,000
4. Secs. 901 (2) (iv) and 911 (9). Educational allowances. *Comment.*—The estimate for fiscal 1955 is related to children of Foreign Service personnel attending college in the United States and is designed to cover the travel expense of approximately 3/4 trips to and from the field at an average cost of $1,476 per trip. For fiscal 1956, the estimate covers (1) an allowance of $340 each for 1,013 children in elementary and secondary grades residing abroad, (2) travel for 25 percent of the same children to nearest satisfactory school in the country of residence at $100 each, (3) travel for 92 children in secondary grades from abroad to the United States and return at an average cost of $1,476 each, prorated over a 3-year period, and (4) travel of 74 children attending college in the United States to post of parents' assignment and return at an average cost of $1,476 each, prorated over a 4-year period.	50,000	442,000
5. Sec. 943. Medical examinations of dependents of Foreign Service personnel stationed abroad. *Comment.*—The estimate is based on the assumption that average cost of each examination will be $7, and that 1,000 such examinations would be made during the balance of fiscal 1955, that 4,000 such examinations would be made annually thereafter.	7,000	28,000

SUMMARY

	1955	1956
Sec. 413	$5,000	$75,000
Sec. 443	120,000	480,000
Sec. 901 (2) (ii)	50,000	200,000
Secs. 901 (2) (iv) and 911 (9)	50,000	442,000
Sec. 943	7,000	28,000
Total	232,000	1,225,000

An additional cost of $67,000 occasioned by section 8 on retirement credit for military service will result in a total per annum cost of about $1,290,000.

MORALE IN THE FOREIGN SERVICE

The committee recognizes that the integration program launched last year and being given impetus by the pending legislation has caused certain morale problems in the Department of State, as well as in the Foreign Service. Its attention has been called to instances in which promotions in the Foreign Service have lagged behind promotions in the departmental service with the result that there may be some inequities in transferring certain departmental officers to the Foreign Service. It also recognizes that some employees in Washington do not desire to serve overseas and will choose to remain in the Department rather than enter the Foreign Service.

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The committee feels that the responsibilities of the United States in the field of foreign policy have so expanded in recent years that it is essential that the Foreign Service Officer corps be increased in size. It would have preferred to have seen this expansion take place over a period of years by the admission to the Foreign Service of applicants in the lower classifications. This has not been possible for a variety of reasons. The committee believes that the integration program should move ahead rapidly but at the same time must be administered with careful consideration of special situations and personnel problems which will undoubtedly arise.

COMMITTEE RECOMMENDATIONS

The committee, after a survey of the proposals that the Foreign Service officer corps be increased by the lateral entry of officers from the Department of State, believes that the pending legislation should be approved. It may be necessary to examine in more detail the problem of lateral entries at a later time. The present bill, however, limits the number of such entrants to 1,250. This seems to the committee to be a reasonable figure.

The committee also approves the other amendments to the Foreign Service Act of 1946 which are covered by this legislation and urges that the Senate give its early approval to the resolution.

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APPENDIXES

Appendix I

In lieu of publishing committee hearings held on March 22, 1955, the statement of the principal witness in support of H. R. 4941, Mr. Loy Henderson, Deputy Under Secretary of State for Administration, is printed herewith. The full hearings are available at the committee offices.

Statement of Hon. Loy W. Henderson, Deputy Under Secretary of State for Administration, Before the Senate Committee on Foreign Relations in Support of Amendments to the Foreign Service Act of 1946

Mr. Chairman, I appreciate the opportunity to appear before this committee in support of legislative improvements in the Foreign Service Act of 1946. As you are aware, the Committee on Foreign Affairs of the House of Representatives recently completed hearings on certain amendments to the act of 1946 requested by the Secretary of State, and has reported out H. R. 4941. This measure differs in some respects from the amendments proposed by the Department. However, in basic purpose and concept they are the same, namely, to improve and strengthen the Foreign Service in order that it may serve as a more effective instrument for the conduct of our foreign relations.

The committee will recall that Mr. Charles E. Saltzman, then Under Secretary of State for Administration, appeared before this committee last July. At that time he discussed the steps the Secretary of State was taking to improve and strengthen our Foreign Service, based on recommendations made to the Secretary last May by his Public Committee on Personnel. Consequently, I shall avoid undue repetition of that presentation.

As you are aware, profound changes have occurred over the past decade in the number and complexity of international problems with which our Government must cope. The manner in which we in the State Department and the Foreign Service assist in finding solutions to these problems, and the character and quality of the men and women who are concerned with their solution, is bound to have a deep effect upon the future history of our country.

The personnel of the Department of State and the Foreign Service, in my opinion, have in general acquitted themselves in a creditable manner. Steps have been taken during recent years to improve the management and administration of the Department and the Foreign Service. However, we have been handicapped by certain deficiencies in organization, legislative authorization, and personnel. Considerable progress has been made over the past 9 months in putting into effect improvements suggested by the Secretary's Public Committee on Personnel, within existing legislative authority and budget ceilings. However, much remains to be done.

It seems to me that without further delay, additional measures, especially necessary legislation, should be taken to enable the Department to overcome present deficiencies. I hope that, with the cooperation of the Congress, we shall be able within the next few years to achieve a much stronger and more broadly based professional Service manned by highly trained and capable personnel prepared to serve wherever and whenever in the opinion of their Government they can be the most useful. In spite of certain shortcomings, the Foreign Service, in my opinion, is even now one of the best in the world and one of which we can be justly proud. I do not believe that it is possible to find anywhere a more devoted, loyal, and able group of men and women than those who are at present in the Department of State and its Foreign Service.

Before taking up the matter of legislation, I would like to touch briefly on the four principal points of the Secretary's personnel program. The first and most

fundamental is to build up the Foreign Service Officer Corps to include, in addition to the present Foreign Service officers, those civil-service officers in the Department and its Foreign Service Reserve and staff who are engaged in essentially the same kind of work. This process, which we refer to as the "integration program," was launched last August. When completed it will make available to the Secretary a substantially larger corps of career officers each of whom is prepared to serve anywhere as the needs of the Service might require. At the time the program was started, approximately 30 percent of the officers under the Secretary's jurisdiction were members of the civil service stationed in Washington and not subject to transfer abroad. Integration is making many of these officers and the special skills they possess available for service both at home and abroad. At the same time, integration is making it possible for a larger number of Foreign Service officers to serve in the United States. I am convinced that in the years to come the Department of State and its Foreign Service will be more effective in the conduct of our foreign relations if most of the officer personnel shall have had experience both at home and abroad. The integration program, I should point out, does not increase the number of persons on our payroll. It merely involves the transfer of properly qualified civil service and Foreign Service Reserve and staff officers to the Foreign Service Officer Corps.

A second major need relates to the recruitment of able young men and women into the lower grades of the Service. Based on my years of experience, I am convinced that if the Foreign Service is to attract and hold good people, it must be able to offer them a genuine career. This means that once the present integration program is completed, entry into the Foreign Service Officer Corps should be, in our opinion, primarily through open competitive examination for class FSO–6 which is the junior or entrance level to the corps. To this end, the Department is undertaking what is perhaps the most intensive recruitment campaign in its history. Our emphasis upon recruitment does not mean, however, that we intend to lower the standards for entry into the Foreign Service.

A third fundamental need is to expand and improve the training of our personnel. The Foreign Service Institute is extending its facilities and broadening its training programs. Increased funds authorized by Congress last year have been most helpful in this regard. Much more remains, however, to be done in this field.

A fourth basic need is to provide more favorable conditions for our personnel serving abroad. Most of those who choose the Foreign Service as a lifetime career do so because of a devotion to public service. Their motive is not self-enrichment. Despite improvements provided by the Foreign Service Act of 1946, most of our personnel are still beset by real financial worries: how to find the means to give their children an adequate American-type education, how to assure their families proper medical attention when serving at distant and disease-ridden posts. It seems to me that it would be in the public interest to relieve these people, to an extent at least, of some of these financial burdens.

I would like at this point to discuss the provisions contained in H. R. 4941 as reported out by the House Committee on Foreign Affairs. These amendments are somewhat different from those set forth in the letter which the Secretary of State addressed to the Vice President and the Speaker of the House of Representatives on January 25, 1955. Nevertheless, in our opinion, they would accomplish the same general purpose.

Section 2 of H. R. 4941 amends section 413 of the present law by authorizing the appointment of Foreign Service officers at salary steps above the minimum salary rate for each class. The act of 1946 requires that appointments to classes 1 through 5, inclusive, be made only at the minimum salary rate of the class to which appointed. This provision is identical to the Department's proposed amendment.

As the committee is aware, Public Law 759 of the 83d Congress, effective August 31, 1954, amended the Foreign Service Act of 1946 to permit not more than 500 persons to be appointed to classes FSO–1 through FSO–5 at other than the minimum salary rate until March 31, 1955, from the classified civil service or the Foreign Service reserve or Foreign Service staff. This temporary authorization has enabled the Department to move forward on the integration program. The committee might be interested to know that by March 18, 1955, 572 officers have been certified by the Board of Examiners for the Foreign Service for appointment as Foreign Service officers under the present integration program; 351 of these have been confirmed by the Senate and an additional 219 have been nominated by the President. Of the 572 candidates, 411 have been approved for appointment above the minimum rate for classes 1 through 5 in accordance with Public Law 759.

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Another 41 candidates who had been approved for lateral appointment prior to the inauguration of the present integration program also have been appointed pursuant to that act.

Since Public Law 759 expires on March 31, 1955, early approval of the requested authority to continue to make lateral appointments above the minimum rate is essential if the integration program is not to come to a halt. I believe it would be extremely detrimental to the efficient administration of the Department as well as to the morale of our personnel if the program should be interrupted at this point.

The proposed revision of section 413 of the Foreign Service Act of 1946, unlike Public Law 759, does not contain any limitation on the number of appointments that might be made above the minimum salary rate; neither does it impose a time limitation nor contain any reference to the categories or classes of personnel who may be appointed. Section 4 of the House bill, which I shall discuss in a moment, does, however, place a limitation on the number of persons who can enter the Foreign Service officer corps in classes 1 to 5.

Section 3 of H. R. 4941 amends section 443 of the present law to make Foreign Service officers and reserve officers eligible to receive additional compensation not to exceed 25 percent of basic salary while assigned to hardship posts; namely, posts involving extraordinarily difficult living conditions, excessive physical hardship, or notably unhealthful conditions.

Such additional compensation is now paid to Foreign Service staff personnel and to civilian employees of other Government agencies who are stationed abroad. This provision of H. R. 4941 is identical to the Department's proposed amendment of the present law. I should add that Foreign Service officers at present receive extra credit toward retirement for service at unhealthful posts, namely, 1½ years for each year of such service. Unhealthful posts are included in the hardship post list. This provision contemplates that a Foreign Service officer may choose between receiving the extra credit toward retirement when assigned to an unhealthful post or receiving a salary differential. He cannot receive both for the same period of service.

Section 4 of H. R. 4941 amends section 517 of the present law in four principal respects. Section 517 relates to the examination and appointment of persons as Foreign Service officers in classes 1 through 5.

1. The first change relates to the type or types of examinations to be given candidates for such appointment. Under the present law a candidate may not be so appointed unless, and I quote, "he has passed such written, oral, physical, and other examinations as the Board of Examiners for the Foreign Service may prescribe to determine his fitness and aptitude for the Service"—end quotation. The Department's proposed amendment would have merely deleted reference to the various types of examinations. Its purpose was to remove any doubt that the Board of Examiners had discretion to determine the type or types of examinations that should be given. H. R. 4941 requires that the Board prescribe "comprehensive mental and physical examinations." In explaining this language, House Report No. 229, accompanying H. R. 4941, states that, and I quote, "the examination will be a 'comprehensive mental' one. It may be written, or oral, or both. The committee is not specifying the form or content of the examination"—end quotation.

2. A second change in the present law contained both in H. R. 4941 and in the Department's proposed amendment, eliminates the requirement that the qualifying period of service for lateral appointment be performed "immediately" prior to appointment.

3. A third change in the present law contained both in the Department's amendment and in H. R. 4941 is to open eligibility for lateral appointment to persons who have completed the required period of service in a responsible position in any Government agency or agencies rather than restricting such appointments to personnel who have acquired such service exclusively in the Department of State, or in the Foreign Service reserve or staff. As I have already stated, it is our firm intention to rely primarily on outside recruitment at class FSO–6 once the integration program is completed. However, from time to time, in our opinion, the national interest will be served if the Department is permitted to draw into the career corps a limited number of persons with prior service in other agencies of the Government.

4. A fourth change contained in H. R. 4941 but not included in the Department's amendments is that the House bill limits the number of lateral entry appointments to 1,250, until otherwise provided by act of Congress. The purpose of this limitation as explained in the report is to assure that the amendment

permitting lateral entry, and I quote, "will not lead to an excessive number of lateral entries and to enable the Congress to have another look at the program." The House bill also provides that not more than 40 of the 1,250 lateral entrants may be qualified persons who were not employed on March 1, 1955, in the Department, including its Foreign Service reserve and Foreign Service staff, and who have not also served in a position of responsibility in the Department, or the Service, or both, for the required period prior to appointment.

The 1,250 lateral entrants authorized by the House bill are in addition to those who will have been appointed under Public Law 759. Under such authorization the Department would be able to complete the integration program as well as to bring in a small number of outstanding persons from various Government agencies. It should be pointed out that once the 1,250 quota is exhausted, the effect of the House bill is to render inoperative section 517 of the Foreign Service Act until the Congress takes further action. The Department will undoubtedly come in at a later date and ask for an extension of lateral entry authority.

Members of this committee will recall that Public Law 759 of last year contains a provision that was added on the Senate floor limiting the application of the provisions of that law to persons from, and I quote, "the classified civil service or the Foreign Service reserve or Foreign Service staff"—end quotation. H. R. 4941 does not contain such a limitation. In my opinion it would be most unwise for such a limitation to be put on this bill. A considerable number of competent departmental officers with many years of departmental experience are presently serving in so-called excepted positions. Because their positions are in the excepted category, these officers cannot be considered as being in the classified civil service despite the fact that they have personal civil-service status. A number of other departmental officers with excellent records do not, for a variety of reasons, possess competitive civil-service status. I think it is only fair that these officers be given an opportunity to qualify for lateral entry.

The remaining provisions of the House bill may be briefly summarized as follows:

1. Section 5, which amends section 522 of the present law, extends the period a Foreign Service Reserve officer may serve from 4 years to 5 years, as requested in the Department's amendment. The Department's proposal that the Secretary be permitted further to extend this period of service by 2 additional years is dropped in the House bill.

2. Section 6 amends section 571 of the existing law to permit the Secretary, under special circumstances, to extend the 4-year period that an officer or employee may be assigned to the Department (or another agency) by not more than 4 additional years. The Department's proposed amendment left the matter of such an extension to the Secretary's discretion.

Both this section of H. R. 4941 and the Department's amendment modify the existing law to remove the requirement that an officer, once assigned for duty to the Department or to another Government agency, may not be reassigned for such duty until the expiration of a period of time equal to his preceding tour of duty or a 2-year period, whichever is the shorter. This revision will enable the Secretary to make the most effective use of his personnel to meet special needs. In practice such reassignments will be made only when there is a sound justification for the action.

Both this section of the House bill and the Department's amendment include a new provision that would permit the Department to be reimbursed for all or a part of the salary of an officer assigned or detailed to another Government agency.

3. Section 7 of H. R. 4941 is identical to the Department's proposed amendments of sections 633 and 634 of the existing law. The new provisions extend the selection-out system, which at present applies up to and including class FSO–2, to class FSO–1.

Another change is to clarify the basis for administering selection-out by stipulating that an officer may be retired from the Service either for failure to be promoted after having served for a maximum period of time in class or for failure to maintain an adequate standard of performance.

Finally, this section places a limit of not more than 1 year's pay on the amount of severance gratuities presently authorized for Foreign Service officers in classes 4 and 5 who are selected-out.

4. The provisions of section 8 of H. R. 4941 were not included in the Department's proposed amendments. The Department, however, would welcome this amendment, which modifies the Foreign Service retirement and disability system to grant a person free credit toward retirement for periods of active military service preceding his appointment as a Foreign Service officer. Such credit has been given under the civil-service retirement system since April 1, 1948. At present, an officer entering the Foreign Service who has received such free credit under

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civil service must pay for his military service. The House bill removes this inequity and further provides for a refund of contributions that have been made since April 1, 1948.

5. Section 9 of H. R. 4941 amends section 853 of the present law by providing that no extra credit shall be given toward retirement for service at an unhealthful post if an officer receives a salary differential for such service. You will recall that section 3 of H. R. 4941 authorizes the payment of such differentials for service at hardship posts. This provision on retirement credit does not, of course, apply retroactively. The Department's amendment differs somewhat from the House bill in that it would not permit an officer to choose as between extra retirement credit or the salary differential. In our opinion, the House version is preferable.

6. Sections 10 and 11 of H. R. 4941 amend sections 901 (2) and 911 of the present law in two important respects. The House bill authorizes a home service transfer allowance to be paid to personnel of the Service when they are assigned from a post abroad to the continental United States between foreign assignments. Such a provision will assist officers in meeting the out-of-pocket expenses that result from the mobile nature of their employment.

The second provision, and one which we consider to be most important and fully justified, is authorization to defray a part of the expenses incurred by our people in educating their children while they are stationed abroad. I will not go into the particulars of this provision now. I wish again to emphasize that the financial and morale problems that result from the absence of such a provision are real and acute. The House version differs from the Department's amendment as regards legislative language, but the essential purpose of each is the same.

7. Section 12 of the House bill is identical to the Department's amendment to section 943 of the present law to provide for administering physical examinations and inoculations and vaccinations to dependents. This provision is not only humanitarian, but will also protect the Government.

Although there are some differences between the amendments requested by the Department and those contained in H. R. 4941, the two measures are alike as to purpose and concept. Accordingly, the Department endorses the provisions of the House bill.

Mr. Chairman, this concludes my statement. Members of my staff and I are at your disposal.

APPENDIX II

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

FOREIGN SERVICE ACT OF 1946

SALARIES AT WHICH FOREIGN SERVICE OFFICERS MAY BE APPOINTED

[SEC. 413. (a) A person appointed as a Foreign Service officer of class 6 shall receive salary at that one of the rates provided for that class by section 412 which the Secretary shall, taking into consideration his age, qualifications, and experience, determine to be appropriate for him to receive.

[(b) A person appointed as a Foreign Service officer of classes 1 through 5, inclusive, shall receive salary at the minimum rate provided for the class to which he has been appointed, except that until March 31, 1955, not more than five hundred persons may be appointed from the classified civil service or the Foreign Service reserve or Foreign Service staff at other than the minimum rate.]

SEC. 413. A person appointed as a Foreign Service officer shall receive basic salary at one of the rates of the class to which he is appointed which the Secretary shall, taking into consideration his age, qualifications, and experience, determine to be appropriate for him to receive.

* * * * * * *

OTHER OFFICERS AND EMPLOYEES

SEC. 432. (a) * * *

* * * * * * *

(c) A Foreign Service officer promoted to a higher class shall receive salary at the rate prescribed in section 412 for the class to which he is promoted from the effective date of his appointment to such class. A Foreign Service officer promoted to a higher class during a recess of the Senate shall receive salary at the rate prescribed for the class to which he is promoted from the effective date of his appointment to such class until the end of the next session. If the Senate should reject or fail to confirm the promotion of such an officer during the session following the date of his promotion, the Foreign Service officer shall, unless he has become liable to separation in accordance with the provisions of section 633 [or 634], be automatically reinstated in the class from which he was promoted and receive the salary he was receiving prior to his promotion, such reinstatement to be effective, in the event of rejection of the nomination, from the date of rejection; and in the event of the failure of the Senate to act on the nomination during the session following a promotion, from the termination of that session.

* * * * * * *

ADMINISTRATIVE ESTABLISHMENT OF SALARY DIFFERENTIALS

[SEC. 443. Whenever the President shall find and declare that the rates of salary provided for Foreign Service staff officers and employees in section 415 are inadequate for any positions allocated to any particular class or subclass, he may, under such regulations as he may prescribe, establish necessary schedules of differentials in the rates of salary prescribed for such classes or subclasses, but the differential in salary of a person holding any such position shall not exceed 25 per centum of the salary he would otherwise receive. Such differentials shall be granted only with respect to positions at posts at which extraordinarily difficult living conditions or excessive physical hardship prevail or at which notably unhealthful conditions exist. The Secretary shall prepare and maintain a list of such posts.]

SEC. 443. The President may, under such regulations as he may prescribe, establish rates of salary differential, not exceeding 25 per centum of basic salary, for Foreign Service officers, Reserve officers, and staff officers and employees assigned to posts involving extraordinarily difficult living conditions, excessive physical hardship, or notably unhealthful conditions. The Secretary shall prepare and maintain a list of such posts.

* * * * * * *

ADMISSION TO CLASSES 1, 2, 3, 4, AND 5 WITHOUT PRIOR SERVICE IN CLASS 6

SEC. 517. A person who has not served in class 6 shall not be eligible for appointment as a Foreign Service officer of classes 1 to 5, inclusive, unless he has passed [such written, oral, physical, and other examinations as the] *comprehensive mental and physical examinations prescribed by the* Board of Examiners for the Foreign Service [may prescribe] to determine his fitness and aptitude for the work of the Service; demonstrated his loyalty to the Government of the United States and his attachment to the principles of the Constitution; and rendered at least four years of actual service [immediately] prior to appointment in a position of responsibility in the [Service or in the Department or both] *service of a Government agency, or agencies*, except that, if he has reached the age of thirty-one years, the requirement as to service may be reduced to three years. *After the date of enactment of the Foreign Service Act Amendments of 1955 and until otherwise provided by Act of Congress, not more than one thousand two hundred and fifty persons who have not served in class 6 may be appointed to classes 1 to 5, inclusive; of such persons, not more than forty may be appointed who were not employed on March 1, 1955, in the Department, including its Foreign Service Reserve and Foreign Service Staff personnel, and who have not also served in a position of responsibility in the Department, or the Service, or both, for the required period prior to appointment.*

* * * * * * *

APPOINTMENTS AND ASSIGNMENTS TO THE RESERVE

SEC. 522. Whenever the services of a person who is a citizen of the United States and who has been such for at least five years are required by the Service, the Secretary may—

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(1) appoint as a Reserve officer for nonconsecutive periods of not more than [four] *five* years each, a person not in the employ of the Government whom the Board of the Foreign Service shall deem to have outstanding qualifications [of a specialized character]; and

(2) assign as a Reserve officer for nonconsecutive periods of not more than [four] *five* years each a person regularly employed in any Government agency, subject, in the case of an employee of a Government agency, other than the Department of State, to the consent of the head of the agency concerned.

* * * * * * *

ASSIGNMENTS TO ANY GOVERNMENT AGENCY

[SEC. 571. (a) Any officer or employee of the Service may, in the discretion of the Director General, be assigned or detailed for duty in any Government agency, such an assignment or combination of assignments to be for a period of not more than four years. He may not again be assigned for duty in a Government agency until the expiration of a period of time equal to his preceding tour of duty on such assignment or until the expiration of two years, whichever is the shorter.]

SEC. 571. (a) Any officer or employee of the Service may, in the discretion of the Secretary, be assigned or detailed for duty in any Government agency, such an assignment or combination of assignments to be for a period of not more than four years, except that under special circumstances the Secretary may extend this four-year period for not more than four additional years.

(b) A Foreign Service officer may be appointed as Director General, notwithstanding the provisions of the last sentence of paragraph (a) of this section, but any such officer may not serve longer than four years in such position or positions and upon the completion of such service may not again be assigned to a position in the Department until the expiration of a period of time equal to his tour of duty as Director General or until the expiration of two years, whichever is shorter.

(c) If a Foreign Service officer shall be appointed by the President, by and with the advice and consent of the Senate, to a position in the Department, the period of his service in such capacity shall be construed as constituting an assignment for duty in the Department within the meaning of paragraph (a) of this section and such person shall not, by virtue of the acceptance of such an assignment, lose his status as a Foreign Service officer. Service in such a position shall not, however, be subject to the limitations concerning the duration of an assignment or concerning reassignment contained in that paragraph.

(d) If the basic minimum salary of the position to which an officer or employee of the Service is assigned pursuant to the terms of this section is higher than the salary such officer or employee is entitled to receive as an officer or employee of the Service, such officer or employee shall, during the period such difference in salary exists, receive the salary of the position in which he is serving in lieu of his salary as an officer or employee of the Service. Any salary paid under the provisions of this section shall be paid from appropriations made available for the payment of salaries of officers and employees of the Service and shall be the salary on the basis of which computations and payments shall be made in accordance with the provisions of title VIII.

(e) The salary of an officer or employee assigned pursuant to the terms of this section shall be paid from appropriations made available for the payment of salaries of officers and employees of the Service. Such appropriations may be reimbursed, however, when the Secretary enters into reimbursement agreements with heads of Government agencies for all or any part of the salaries of officers or employees assigned to such agencies and payment is received pursuant thereto, or when an officer or employee of the Service is assigned to a position the salary of which is payable from other funds available to the Department.

* * * * * * *

[FOREIGN SERVICE OFFICERS IN CLASSES 2 AND 3

[SEC. 633. The Secretary shall prescribe the maximum period during which Foreign Service officers in classes 2 or 3 shall be permitted to remain in such classes without promotion. Any officer who does not receive a promotion to a higher class within that period shall be retired from the Service and receive retirement benefits in accordance with the provisions of section 821.

[FOREIGN SERVICE OFFICERS IN CLASSES 4 AND 5

[SEC. 634. (a) The Secretary shall prescribe the maximum period during which Foreign Service officers in classes 4 or 5 shall be permitted to remain in such classes without promotion. Any officer who does not receive a promotion to a higher class within that period shall be retired from the Service and receive benefits as follows:

[(1) One-twelfth of a year's salary at his then current salary rate for each year of service and proportionately for a fraction of a year, payable without interest, in three equal installments on the 1st day of January following the officer's retirement and on the two anniversaries of this date immediately following; and

[(2) A refund of the contributions made to the Foreign Service Retirement and Disability Fund, with interest thereon at 4 per centum, compounded annually, except that in lieu of such refund such officer may elect to receive retirement benefits on reaching the age of sixty-two, in accordance with the provisions of section 821. In the event that an officer who was separated from class 4 and who has elected to receive retirement benefits dies before reaching the age of sixty-two, his death shall be considered a death in service within the meaning of section 832. In the event that an officer who was separated from class 5 and who has elected to receive retirement benefits dies before reaching the age of sixty-two, the total amount of his contributions made to the Foreign Service Retirement and Disability Fund, with interest thereon at 4 per centum, compounded annually, shall be paid in accordance with the provisions of section 841.

[(b) Notwithstanding the provisions of section 3477 of the Revised Statutes (31 U. S. C. 203) or the provisions of any other law, a Foreign Service officer who is retired in accordance with the provisions of this section shall have the right to assign to any person or corporation the whole or any part of the benefits receivable by him pursuant to paragraph (a) (1) of this section. Any such assignment shall be on a form approved by the Secretary of the Treasury and a copy thereof shall be deposited with the Secretary of the Treasury by the officer executing the assignment.]

SELECTION-OUT

SEC. 633. (a) The Secretary shall prescribe regulations concerning—

(1) the maximum period during which any Foreign Service officer below the class of career minister shall be permitted to remain in class without promotion; and

(2) the standard of performance which any such officer must maintain to remain in the Service.

(b) Any Foreign Service officer below the class of career minister who does not receive a promotion to a higher class within the specified period or who fails to meet the standard of performance required of officers of his class shall be retired from the Service and receive benefits in accordance with the provisions of section 634.

SELECTION-OUT BENEFITS

SEC. 634 (a) Any Foreign Service officer in classes 1, 2, or 3 who is retired from the Service in accordance with the provisions of section 633 shall receive retirement benefits in accordance with the provisions of section 821.

(b) Any Foreign Service officer in classes 4 or 5 who is retired from the Service in accordance with the provisions of section 633 shall receive—

(1) one-twelfth of a year's salary at his then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his then current salary rate, payable without interest, in three equal installments on the 1st day of January following the officer's retirement and on the two anniversaries of this date immediately following; and

(2) a refund of the contributions made to the Foreign Service Retirement and Disability Fund, with interest thereon at 4 per centum, compounded annually, except that in lieu of such refund such officer may elect to receive retirement benefits on reaching the age of sixty-two, in accordance with the provisions of section 821. In the event that an officer who was separated from class 4 and who has elected to receive retirement benefits before reaching the age of sixty-two, his death shall be considered a death in service within the meaning of section 832. In the event that an officer who was separated from class 5 and who has elected to receive retirement benefits dies before reaching the age of sixty-two, the total amount of his contributions made to the Foreign Service Retirement and Disability Fund, with interest thereon at 4 per centum, compounded annually, shall be paid in accordance with the provisions of section 841.

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(c) Notwithstanding the provisions of section 3477 of the Revised Statutes, as amended (31 U. S. C. 203), or the provisions of any other law, a Foreign Service officer who is retired in accordance with the provisions of section 633 shall have the right to assign to any person or corporation the whole or any part of the benefits receivable by him pursuant to paragraph (b) (1) of this section. Any such assignment shall be on a form approved by the Secretary of the Treasury and a copy thereof shall be deposited with the Secretary of the Treasury by the officer executing the assignment.

* * * * * * *

ANNUITANTS

SEC. 804. Annuitants shall be persons who are receiving annuities from the Fund on the effective date of this Act, persons who shall become entitled to receive annuities in accordance with the provisions of sections 519, 631, 632, [633,] 634, 636, 637, 831, 832, and 833, and all widows and beneficiaries of participants who are entitled to receive annuities in accordance with the terms of this title.

* * * * * * *

PRIOR SERVICE CREDIT

SEC. 852. (a) A participant may, subject to the provisions of this section, include in his period of service—

(1) service performed as a civilian officer or employee of the Government prior to becoming a participant; and

(2) active military or naval service in the Army, Navy, Marine Corps, *Air Force*, or Coast Guard of the United States.

(b) A person may obtain credit for prior service by making a special contribution to the Fund equal to 5 per centum of his annual salary for each year of service for which credit is sought subsequent to July 1, 1924, with interest thereon to date of payment compounded annually at 4 per centum, *except that no special contributions shall be required for periods of active military or naval service in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States prior to becoming a participant.* Any such participant may, under such conditions as may be determined in each instance by the Secretary, pay such special contributions in installments during the continuance of his service.

EXTRA SERVICE CREDIT FOR SERVICE AT UNHEALTHFUL POSTS

SEC. 853. The President may from time to time establish a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts, and each year of duty subsequent to January 1, 1900, at such posts inclusive of regular leaves of absence, of participants thereafter retired, shall be counted as one year and a half, and so on in like proportion in reckoning the length of service for the purpose of retirement, fractional months being considered as full months in computing such [service.] *service, but no such extra credit for service at such unhealthful posts shall be credited to any participant who shall have been paid a salary differential in accordance with section 443, as amended, for such service performed subsequent to the date of enactment of the Foreign Service Act Amendments of 1955.* [The President may at any time cancel the designation of any places as unhealthful without affecting any credit which has accrued for service at such posts prior to the date of the cancellation.]

* * * * * * *

ATTACHMENT OF MONEYS

SEC. 864. None of the moneys mentioned in this title shall be assignable either in law or equity, or be subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 634 [(b)] *(c)*.

* * * * * * *

QUARTERS, COST OF LIVING, AND REPRESENTATION ALLOWANCES

SEC. 901. In accordance with such regulations as the President may prescribe and notwithstanding the provisions of section 1765 of the Revised Statutes (5 U. S. C. 70), the Secretary is authorized to grant to any officer or employee of the Service who is a citizen of the United States—

(1) allowances wherever Government owned or rented quarters are not available, for living quarters, heat, light, fuel, gas, and electricity, including allowances for the cost of lodging at temporary quarters, incurred by an officer or employee of the Service and the members of his family upon first arrival at a new post, for a period not in excess of three months after such first arrival or until the occupation of residence quarters, whichever period shall be shorter, up to but not in excess of the aggregate amount of the per diem that would be allowable to such officer or employee for himself and the members of his family for such period if they were in travel status;

(2) cost-of-living allowances whenever the Secretary shall determine—

(i) that the cost of living at a post abroad is proportionately so high than an allowance is necessary to enable an officer or employee of the Service at such post to carry on his work efficiently;

(ii) that extraordinary and necessary expenses, not otherwise compensated for, are incurred by an officer or employee of the Service incident to the establishment of his residence at [his post of assignment] *any post of assignment abroad or at a post of assignment in the continental United States between assignments to posts abroad;*

(iii) that an allowance is necessary to assist an officer or employee of the Service who is compelled by reason of dangerous, notably unhealthful, or excessively adverse living conditions at his post abroad or for the convenience of the Government to meet the additional expense of maintaining his wife and minor children elsewhere than in the country of his assignment;

(iv) that extraordinary and necessary expenses, not otherwise compensated for, must be incurred by an officer or employee of the Service, by reason of his service abroad, in providing for adequate elementary and secondary education for his dependents; allowances under this subparagraph for any post shall not exceed the cost of obtaining such educational services as are ordinarily provided without charge by the public schools of the United States plus, in those cases where adequate schools are not available at the post, board and room, and periodic transportation between the post and the nearest locality where adequate schools are available; if any such officer or employee employs a less expensive method of providing such education, any allowance paid to him shall be reduced accordingly; no allowance shall be paid under this subparagraph for a dependent for whom a travel allowance has been paid under section 911 (9);

(3) allowances in order to provide for the proper representation of the United States by officers or employees of the Service.

* * * * * * *

GENERAL PROVISIONS

SEC. 911. The Secretary may, under such regulations as he shall prescribe, pay—

(1) the travel expenses of officers and employees of the Service, including expenses incurred while traveling pursuant to orders issued by the Secretary in accordance with the provisions of section 933 with regard to the granting of home leave;

(2) the travel expenses of the members of the family of an officer or employee of the Service when proceeding to or returning from his post of duty; accompanying him on authorized home leave; or otherwise traveling in accordance with authority granted pursuant to the terms of this or any other Act;

(3) the cost of transporting the furniture and household and personal effects of an officer or employee of the Service to his successive posts of duty and, on the termination of his services, to the place where he will reside;

(4) the cost of storing the furniture and household and personal effects of an officer or employee of the Service who is absent under orders from his usual post of duty, or who is assigned to a post to which, because of emergency conditions, he cannot take or at which he is unable to use, his furniture and household and personal effects;

(5) the cost of storing the furniture and household and personal effects of an officer or employee of the Service on first arrival at a post for a period not in excess of three months after such first arrival at such post or until the establishment of residence quarters whichever shall be shorter;

(6) the travel expenses of the members of the family and the cost of transporting the personal effects and automobile of an officer or employee of the

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Service, whenever the travel of such officer or employee is occasioned by changes in the seat of the government whose capital is his post;

(7) the travel expenses and transportation costs incident to the removal of the members of the family of an officer or employee of the Service and his furniture and household and personal effects, including automobiles, from a post at which, because of the prevalence of disturbed conditions, there is imminent danger to life and property, and the return of such persons, furniture, and effects to such post upon the cessation of such conditions; or to such other post as may in the meantime have become the post to which such officer or employee has been assigned.

(8) the cost of preparing and transporting to their former homes in the continental United States or to a place not more distant, the remains of an officer or employee of the Service who is a citizen of the United States and of the members of his family who may die abroad or while in travel [status.] *status;*

(9) the travel expenses incurred by an officer or employee of the Service who is assigned to a foreign post, in transporting dependents to and from United States ports of entry designated by the Secretary, to obtain an American secondary or college education, not to exceed one trip each way for each dependent for the purpose of obtaining each type of education.

* * * * * * *

PHYSICAL EXAMINATIONS AND COSTS OF INOCULATIONS

SEC. 943. The Secretary shall, under such regulations as he may prescribe, provide for the periodic physical examination of officers and employees of the Service who are citizens of the United States, *and their dependents*, including examinations necessary to establish disability or incapacity in accordance with the provisions of section 831, and for the cost of administering inoculations or vaccinations to such officers or employees, *and their dependents.*

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Calendar No. 131

84TH CONGRESS, 1st Session | SENATE | REPORT No. 128

COLORADO RIVER STORAGE PROJECT

REPORT

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

TOGETHER WITH

SEPARATE AND MINORITY VIEWS

TO ACCOMPANY

S. 500

A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO CONSTRUCT, OPERATE, AND MAINTAIN THE COLORADO RIVER STORAGE PROJECT AND PARTICIPATING PROJECTS IN THE STATES OF ARIZONA, COLORADO, NEW MEXICO, UTAH, AND WYOMING

MARCH 30 (legislative day MARCH 10), 1955.—Ordered to be printed

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Calendar No. 131

84TH CONGRESS, 1st Session } SENATE { REPORT No. 128

COLORADO RIVER STORAGE PROJECT AND PARTICIPATING PROJECTS

MARCH 30 (legislative day, MARCH 10), 1955.—Ordered to be printed

Mr. ANDERSON, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 500]

The Senate Committee on Interior and Insular Affairs, to whom was referred the bill (S. 500) to authorize the Secretary of the Interior to construct, operate, and maintain the Colorado River storage project and participating projects in the States of Arizona, Colorado, New Mexico, Utah, and Wyoming, having considered the same, report favorably thereon with amendments, and with the recommendation that the bill, as amended, do pass. Senate 500 was introduced by Mr. Anderson and sponsored by the following nine other Senators: Mr. Allott, Mr. Barrett, Mr. Bennett, Mr. Chavez, Mr. Goldwater, Mr. Hayden, Mr. Millikin, Mr. O'Mahoney, and Mr. Watkins.

Public hearings on S. 500 were held by the Committee on February 28, March 1, 2, 3, 4, and 5, 1955. Some 57 witnesses appeared, including Members of the Senate and House of Representatives, the Secretary of the Interior, the Governor of Colorado, and many officials from other interested States. Testimony and exhibits submitted to the committee during the hearings comprise 734 printed pages.

1. PURPOSE OF THE BILL

S. 500, as amended, has four principal purposes. First, it would authorize a series of holdover storage reservoirs, with hydropower plants and incidental works. Second, it would authorize a number of consumptive use irrigation projects. Third, it would recognize, with a view to laying a foundation for eventual further action by the Congress, certain units and projects in several stages of planning, but plans for which are not sufficiently advanced to warrant final and unconditional authorization. Finally, the bill recognizes that the works authorized constitute only an initial phase of a comprehensive develop-

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ment of the water resources apportioned to the Upper Basin and that the specific authorizations in this bill are not intended to limit or preclude the consideration and authorization by Congress of other projects for the use of waters apportioned under the compacts as additional needs are indicated.

2. BACKGROUND

The Colorado River Compact of 1922 divides the Colorado River Basin into two parts, the Upper Basin, comprising those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming—

within which and from which waters naturally drain into the Colorado River system above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River system which are now or shall hereafter be beneficially served by waters diverted from the system above Lee Ferry (Colorado River Compact, art. II f)—

and the Lower Basin, comprising—

those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River system below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River system which are now or shall hereafter be beneficially served by waters diverted from the system below Lee Ferry (Colorado River Compact, art. II g).

Article III (a) of the compact apportions to each basin in perpetuity—

the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum * * *.

Article III (d) of the compact provides that the—

States of the upper division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75 million acre-feet for any period of 10 consecutive years * * *.

The Colorado River Compact and the Boulder Canyon Project Act (45 Stat. 1057) became effective in 1929 upon ratification of the compact by all States other than Arizona, the enactment of the California Limitation Act, and proclamation by the President.

The Upper Colorado River Basin Compact of 1948 apportions among the States of Arizona, Colorado, New Mexico, Utah, and Wyoming the consumptive use of waters apportioned to the Upper Basin by the Colorado River Compact of 1922.

Lower Basin development has proceeded at a rapid pace with the construction of Hoover Dam and the Boulder Canyon project, Parker Dam, Davis Dam, and other works. Large populations in cities such as Los Angeles and San Diego, and extensive agricultural areas served by the Imperial Irrigation District, the Palo Verde District, and others create expanding uses of the waters of the Colorado River for domestic, industrial, and agricultural purposes.

Development in the Upper Basin States of the consumptive use of water awarded to that area by the original compact has been retarded while a comprehensive plan for the most efficient use of their waters has been in preparation, while the investigation and selection of the best dam sites has been under way, and while engineering and economic problems have been considered. The Upper Basin comprises an area of some 110,000 square miles. On its fringes lie such large centers of population as Albuquerque, Denver, and Salt Lake City and their environs, each of which has experienced rapid growth in

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recent years; each of which anticipates additional significant growth, with ever more urgent need for water and power. In Wyoming, there are several counties in the southwestern part of the State also on the fringes of the basin, which are rich in natural resources. The Upper Basin proper has been primarily an agricultural area. Beginning with the Green River and its tributaries in Wyoming, it contains, however, important resources of uranium, vanadium, iron, and other metals, coal, oil, oil shale, and phosphates. It stands, the committee believes, on the verge of great industrial growth, with consequent increase in need for water for domestic, industrial, and agricultural purposes, as well as for power.

The Colorado River is an erratic stream. The periods of high flow do not coincide with the periods of greatest demand on its waters. If, therefore, any substantial uninterrupted uses of available water are to be made by the upper division States (Colorado, New Mexico, Utah, Wyoming), in addition to those small projects constructed prior to adoption of the compact, there must be provided a series of holdover storage reservoirs, which will assure compliance with article III (d) of the 1922 Compact and, at the same time, permit the Upper Basin States to achieve ultimate development of waters apportioned to them. As these waters are released, they will generate hydroelectric power, which can be used to advantage and for which there is a ready market throughout all the Colorado River Basin States. These reservoirs can at the same time provide recreational areas comparable to Lake Mead behind Hoover Dam.

3. DESCRIPTION OF THE BILL

The repayment provisions of the bill, following very closely recommendations made by the President, the Bureau of the Budget, and the Secretary of the Interior, are designed to achieve, so far as practicable, the concurrent return of expenditures for power and irrigation and municipal and industrial water supply purposes, insofar as expenditures therefor are made concurrently. The power and municipal and industrial water supply expenditures are returned with interest. All reimbursable costs are returnable within 50-year periods, and this is specifically required by section 4 of the bill as amended.

The committee considered whether litigation now pending in the Supreme Court of the United States between Arizona and California et al. raises any question affecting the advisability or propriety of the authorization at this time of the works herein recommended. The committee is convinced that nothing in such pending litigation warrants delay in authorization of the works proposed in the bill, and that such is the case even if Colorado, New Mexico, Utah, and Wyoming should be impleaded.

The works recommended by the Upper Colorado River Commission for the States of Colorado, New Mexico, Utah, and Wyoming are fully justified because they are designed only to make effective part of the perpetual apportionment of 7,500,000 acre-feet annually made to the Upper Basin in the Colorado River Compact, and partake of the character of works heretofore authorized under the Federal reclamation program. The committee concludes that the authorization of this plan of development, being plainly within the Upper Basin apportionment, cannot and should not be construed as detri-

mental in any respect to the rightful interests of Arizona, California, or Nevada, as lower basin States, whether as litigants or otherwise. However, the committee calls attention to section 12 of the bill which makes it possible for any Colorado River Basin State to institute litigation promptly in the Supreme Court of the United States, in the event questions arise regarding the legality of the operation of any works herein authorized or of any other works on the river. Possible frustration of efforts effectively to litigate such questions is avoided by waiver of the immunity of the United States from such a suit. Thus, all States of the Colorado River Basin are fully protected against the operation of any works on the Colorado River system in contravention of the Colorado River Compact of 1922, the Boulder Canyon Project Act, and the Mexican treaty. Furthermore, the provision contained in the bill (sec. 12 (b)) for consultation with an Advisory Committee in connection with the operation of works on the river will tend, as a practical matter, to obviate misunderstanding and to reduce occasions for litigation.

The Committee concluded that it was satisfactorily established by the evidence that the aggregate of the consumptive use of water that will be made, if all of the works hereby proposed to be authorized are eventually constructed after meeting the various conditions imposed, when added to consumptive use already being made in the upper division States, will amount to less than two-thirds of the apportionment made to the upper basin under the compact. When all storage units and participating projects named in this bill are constructed, the aggregate of all consumptive uses in the Upper Basin would not exceed 4.8 million acre-feet of water per annum. This would leave an unused apportionment of 2.7 million acre-feet of the 7.5 million acre-feet apportioned to the Upper Basin to meet any contingencies arising out of litigation over varying interpretations of the compact. In the circumstances, the continuity of the water supply for the Lower Basin would be assured.

The evidence showed that the difference in Upper Basin uses, derived, on the one hand, from the application of the diversions-less-returns method and, on the other, from the application of the inflow-outflow method of measuring consumptive use, accepting the most extreme estimates, cannot exceed half a million acre-feet. Therefore, the committee concluded that existing differences of opinion as to which theory or method of measuring uses should prevail have no bearing on the consideration of S. 500. The same conclusion was reached in connection with other questions, the answers to which depend on interpretation of the Colorado River Compact, the construction of treaties with Indian tribes, construction of the Boulder Canyon Project Act, or construction of the treaty with the United Mexican States. The evidence showed that even if all of the questions so raised by opponents of this measure were to be resolved against the upper division States, the requirements of the consumptive use projects authorized or proposed to be authorized would be well within the Upper Basin's apportionment.

Legislative proposals made in connection with the Colorado River storage project and participating projects are in general accord with the established policy followed by the Congress in connection with Federal reclamation projects for the last 50 years. In some respects such proposals are more conservative than established policy. Nor are they, in some respects, as generous as the Federal reclamation

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legislation under which the Central Valley of California has prospered and hopes for further development. They are similar to the policies under which the Boulder Canyon project was developed. The understandable desire of certain Lower Basin entities for continuation of the status quo on the Colorado River cannot justify the Congress in longer delaying legitimate Upper Basin development.

The Committee concludes that the use of holdover storage reservoirs for river regulation is contemplated by the Colorado River compact. To accept the argument against holdover storage would be a negation of the compact itself. The committee's conclusions in this connection are amply supported by repeated statements by Hon. Herbert Hoover and other negotiators of the compact showing beyond doubt that river regulation through storage is implicit in the compact and that article III (e) of the Colorado River Compact relates only to arbitrary withholding of water.

The Committee likewise concludes that the suggestion that the compact requires the upper division States to deliver water of a particular quality is without merit. In any event the additional use of water involved in S. 500 will have no marked effect on the quality of water delivered to the Lower Basin. There may, in fact, be some improvement therein as a result of such development. So far as mineral content is concerned, exhaustive studies show that, as Mr. Julian Hinds, general manager and chief engineer of the Metropolitan Water District of Southern California said in 1950:

> Under the most unfavorable future conditions, (mineral content) will be lower than the average of waters diverted and successfully used in the Yuma and Imperial Valleys prior to the construction of Hoover Dam (p. 13, report of Metropolitan Water District of Southern California, October 1950).

4. PROJECT WORKS

Features in the plan for developing the Upper Colorado River Basin are divided into two categories: storage units and participating projects. This bill would authorize the initial phase of the plan. In this initial phase are the following storage units: Curecanti, Echo Park, Flaming Gorge, Glen Canyon, Juniper, and Navajo; and the following participating projects: Central Utah (initial phase), Emery County, Florida, Gooseberry, Hammond, LaBarge, Lyman, Paonia (including the Minnesota unit), Pine River extension, Seedskadee, Silt, Smith Fork, and, subject to further approval and authorization by Act of Congress, of feasibility reports before construction of the following additional participating projects: Battlement Mesa, Bluestone, Bostwick Park, Dallas Creek, Dolores, Eagle Divide, East River, Fruit Growers' Extension, Fruitland Mesa, Grand Mesa, Navajo, Ohio Creek, Parshall, Rabbit Ear, San Juan-Chama, Savery-Pot Hook, Sublette, Tomichi Creek, Troublesome, West Divide, and Woody Creek.

Brief descriptions of the physical features of these storage units and participating projects follow:

5. STORAGE UNITS

Curecanti (modified plan)

The Curecanti unit would consist of a reservoir on the Gunnison River formed by the Blue Mesa Dam below the town of Gunnison,

Colo., and of three downstream reservoirs respectively referred to as the Narrow Gauge, Morrow Point, and Crystal Reservoirs. The bill limits the water-surface elevation of the reservoir formed by Blue Mesa Dam to 7,520 feet. At this water-surface elevation, the capacity of the reservoir is estimated at 940,000 acre-feet. The three downstream reservoirs would be primarily for the development of power head with only nominal active storage capacities. Sufficient active capacity would be provided at the Morrow Point site for some seasonal regulation of stream inflows below Blue Mesa Dam.

Echo Park

The Echo Park Dam would be located in Colorado, on the Green River, about 3 miles east of the Utah-Colorado State line and 3 miles below the junction of the Green and Yampa Rivers. The Echo Park Dam is in the power market area of the Upper Basin States. Because of its strategic location below the junction of the Yampa and Green Rivers, and the large and efficient reservoir created by it, the construction and operation of the Echo Park unit would increase the effectiveness of supplementary storage and power developments at the Flaming Gorge and Juniper units and of the future Split Mountain and Gray Canyon units. The Echo Park Dam would be a curved, gravity type, concrete structure rising 690 feet above bedrock. The reservoir would have a storage capacity of 6,460,000 acre-feet, and the powerplant a generating capacity of 200,000 kilowatts.

The Committee recognizes that the opposition to Echo Park Dam stems from individuals who sincerely believe that the authorization of this dam would be an "invasion" of Dinosaur National Monument and constitute a precedent detrimental to other units of the national parks system. However, the committee and the Congress have been provided with documentary evidence which shows conclusively that a tremendous acreage—virtually the complete course of the Green and Yampa Rivers and bordering lands—within the present monument boundaries was reserved for water and power development from 13 to 34 years before the 2,500-fold extension of Dinosaur Monument in 1938. Furthermore, these reservations for water resource development are still valid and in effect today—clearly exempted by the language of the 1938 Dinosaur Monument proclamation; this language is unique in proclamations and laws pertaining to parks and monuments. These documents, some of which were introduced in the House hearings in 1954, have not been refuted.

The Echo Park Dam site has many advantages as a component of the initial phase of the project. To deny now the use of the Echo Park site for that purpose would amount to a breach of faith on the part of the Government. Such denial would tend to weaken reclamation and power reservations now applying to public lands on many other streams in the western United States.

After hearing much testimony on both sides of the question, the committee concludes that there is no invasion of national park or monument areas. In view of these legal and historical precedents for priority use of the Green and Yampa Rivers for water resource development, and in view of the obvious fact that water is so precious in the semiarid Colorado River Basin, the decision must be in favor of the selection of that site (Echo Park) where evaporation losses are reduced by a significant amount. Furthermore, there is urgent need

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for the orderly development of the land and water resources of the Colorado River Basin.

Flaming Gorge

The principal feature of the Flaming Gorge unit is the dam, which will be located on the Green River in Utah, about 32 miles north of Vernal, and which would be a concrete, gravity-type structure rising 440 feet above the river. Flaming Gorge Reservoir formed by the dam would have a total capacity of 3,940,000 acre-feet. The powerplant at the dam would have a capacity of 72,000 kilowatts.

Glen Canyon

The Glen Canyon Dam would be located on the Colorado River in northern Arizona, about 13 miles downstream from the Utah-Arizona State line and 15 miles upstream from Lee Ferry—the division point between the lower and upper basins. It would be a concrete, curved, gravity-type structure rising 700 feet above bedrock. The reservoir, with a total capacity of 26 million acre-feet, would provide final regulation for deliveries to the lower basin under the Colorado River compact. The powerplant would be located near the toe of the dam. It would have a total installed capacity of 800,000 kilowatts.

Juniper

This storage and diversion unit is substituted for Cross Mountain Dam in the development plan. The dam would be located on the Yampa River 24 miles downstream from Craig, Colo., and 10 miles upstream from Maybell, Colo. The reservoir would have a capacity of 1,500,000 acre-feet, and a powerplant of 25,000 kilowatt capacity would be installed. Diversions through a canal would irrigate approximately 29,000 acres of new land in Colorado and 61,000 acres of new land in Utah between the Yampa and White Rivers.

Navajo

The Navajo Dam would be located on the San Juan River in northwestern New Mexico about 34 miles east of the town of Farmington. The dam would be a rolled, earth-filled embankment rising 335 feet above stream bed. Navajo Reservoir would have a total capacity of 1,450,000 acre-feet. The dam and reservoir will provide for gravity diversion for white and Indian lands to be irrigated under the Navajo project. Also, in connection with the San Juan-Chama project, the reservoir would constitute a source of supply for downstream irrigation users in exchange for natural flow diverted upstream.

6. PARTICIPATING PROJECTS

Central Utah

The Central Utah project (initial phase) is located in the eastern Bonneville Basin in central Utah and in the Uinta Basin, part of the Colorado River Basin in northeastern Utah. The plan would include construction of the Strawberry aqueduct along the south slope of the Uinta Mountains for intercepting Uinta Basin streams as far east as Rock Creek, enlargement of the Strawberry Reservoir by construction of the Soldier Creek Dam, enlargement of the Strawberry Reservoir outlet tunnel, construction of five powerplants with a combined generating capacity of 61,000 kilowatts, and construction of a number of other reservoirs for regulation, storage, and water exchanges.

The Wasatch aqueduct, canals, and distribution system would be constructed as necessary to deliver and utilize the increased water supply. Drainage would be provided where necessary. The project would irrigate about 28,540 acres of new land. It would also supply supplemental water for about 131,840 acres and furnish 48,800 acre-feet of municipal water.

Emery County

The Emery County project is located in east-central Utah along the San Rafael River. The project works would include a dam and reservoir, a diversion dam, a canal, and laterals and drains. The project would irrigate about 3,630 acres of new land and furnish supplemental water for about 20,450 acres.

Florida

The Florida project is in southwestern Colorado, in the Florida River Valley. Project works would include a dam and reservoir, a diversion dam, enlargement and extension of existing canal, and distribution laterals and drains. The project would irrigate about 6,300 acres of new land and furnish supplemental water to about 12,650 acres.

Gooseberry

The Gooseberry project would be located in central Utah. It would consist of a storage reservoir on Gooseberry Creek, a tributary to the Colorado River, having a capacity of 17,200 acre-feet, a 2½-mile tunnel to San Pete Valley in the Bonneville Basin, a diversion dam and high-line canal to deliver the water to existing distribution systems. It would furnish supplemental water for 16,400 acres of irrigated lands now having an inadequate water supply.

Hammond

The Hammond project is in northwestern New Mexico along the San Juan River. The project works would include a diversion dam, a canal, and distribution laterals and drains. The project would irrigate about 3,670 acres of new land.

LaBarge

The LaBarge project is in southwestern Wyoming in the upper end of the Colorado River Basin. It extends approximately 40 miles along the west side of Green River. Project works would include a diversion, a conveyance canal, and distribution laterals. About 7,970 acres of new land would be irrigated by this project.

Lyman

The Lyman project is in southwestern Wyoming, just above the Utah-Wyoming State line. It lies along Blacks Fork, a tributary of the Green River. Project works include a reservoir, conveyance canals, and drainage facilities. Supplemental water would be furnished to about 40,600 acres.

Paonia

The Paonia project is located in west-central Colorado on the North Fork of the Gunnison River. This project was previously authorized and is partially constructed. It would, however, be extended by this reauthorization. The project works include a dam and reservoir, canals, and siphon. As reauthorized, the area to be served would

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include 17,040 acres, of which 2,210 would be new land and 14,830 acres would be furnished supplemental water.

Pine River extension

The Pine River extension is in southwestern Colorado and northwestern New Mexico, on Pine River, 20 miles east of Durango, Colo. The project works include a diversion dam, the enlargement and extension of canals, and a number of distribution laterals. The project would irrigate about 15,150 acres of new land. Storage water is to be obtained from existing Vallecito Dam and Reservoir on Pine River.

Seedskadee

The Seedskadee project is in southwestern Wyoming along the Green River below the LaBarge project. Project works would include a diversion dam, conveyance canals, and distribution laterals. About 60,720 acres of new land would be irrigated by the project.

Silt

The Silt project is located in west-central Colorado between Rifle and Elk Creeks. The project works include a dam, and reservoir pumping system, rehabilitation of existing canal, and construction of some new laterals and drains. The project would irrigate about 1,900 acres of new land and would furnish supplemental water for about 5,400 acres.

Smith Fork

The Smith Fork project is located in west-central Colorado along Smith Fork, a tributary of the Gunnison River. The project works would include a dam and reservoir, diversion dam, canals, and laterals. The project would irrigate about 2,270 acres of new land and furnish supplemental water for about 8,160 acres.

PARTICIPATING PROJECTS CONDITIONALLY AUTHORIZED

The following participating projects would be authorized now, conditioned on approval of feasibility reports by Act of Congress before construction could begin:

A brief description of these projects is as follows:

Battlement Mesa, Colorado
Bluestone, Colorado
Bostwick Park, Colorado
Dallas Creek, Colorado
Dolores, Colorado
Eagle Divide, Colorado
East River, Colorado
Fruit Growers' Extension, Colorado
Fruitland Mesa, Colorado
Grand Mesa, Colorado
Navajo, New Mexico
Ohio Creek, Colorado
Parshall, Colorado
Rabbit Ear, Colorado
San-Juan Chama, New Mexico
Savery-Pot Hook, Colorado and Wyoming
Sublette, Wyoming
Tomichi Creek, Colorado
Troublesome, Colorado
West Divide, Colorado
Woody Creek, Colorado

Battlement Mesa

The Battlement Mesa project in Mesa County, west-central Colorado, would regulate the surplus runoff in Buzzard Creek of the Upper Colorado River drainage and two branches of Muddy Creek

of the Gunnison River drainage to provide for the irrigation of 6,780 acres of full service land and 50 acres of supplemental service land located on the south slope of Battlement Mesa near the town of Collbran, Colo. The project would also aid in fishery and wildlife conservation.

Bluestone

The Bluestone project in Garfield and Mesa Counties, west-central Colorado, would divert water from Colorado River to provide for the irrigation of 8,660 acres of new land and 2,215 acres of supplemental service land located in the Colorado River Valley between the town of Rifle and the head of De Beque Canyon near De Beque, Colo.

Bostwick Park

The Bostwick Park project would provide a water supply for 1,040 acres of arable nonirrigated lands and supplemental water for 5,830 acres of presently irrigated lands. The lands are located along the west side of Cimarron Creek below the existing Cimarron Canal and in Bostwick and Shin Parks which lie about 10 miles east of the city of Montrose and also obtain their water supply through the Cimarron Canal. The source of the water supply for the project would be Cimarron Creek, a tributary of Gunnison River in the Upper Colorado River Basin.

Dallas Creek

The Dallas Creek project would provide an irrigation supply for 15,750 acres of arable nonirrigated lands and supplemental water for 6,190 acres of irrigated lands. The lands are located in the drainage basin of the Uncompahgre River, a tributary of Gunnison River in the Upper Colorado River Basin. The water supply for the project would be made available through utilization of surplus flows of Uncompahgre River and two of its tributaries, Dallas Creek and Cow Creek.

Dolores

The Dolores project is planned primarily to store and divert waters of Dolores River to supply irrigation water for 66,000 acres of land in the San Juan River Basin in southwestern Colorado. The lands include 30,550 acres presently irrigated with only a partial water supply and 35,450 acres not now irrigated. The project lands lie near the towns of Cortez and Dove Creek, Colo.

Eagle Divide

The Eagle Divide project in Eagle County, northwestern Colorado, would regulate surplus runoff in Piney River, tributary to the Colorado River, and would divert surplus flows from several small streams, tributaries to the Piney and Colorado Rivers below the planned reservoir, to provide for the irrigation of 8,990 acres of new land and 1,885 acres of supplemental service land. The project lands are located on the divide between the Eagle and Colorado Rivers in the vicinity of the following towns: Eagle, Wolcott, McCoy, and Burns. The project would increase fishery, wildlife, and recreational values of the area.

East River

Development of the potential East River project would provide for irrigation of 1,780 acres of nonirrigated lands and would provide

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supplemental water for 970 acres of presently irrigated lands north of the town of Gunnison in the Upper Colorado River Basin. The water would be made available through construction of the 5-mile East River Canal which would divert from East River, one of the upper tributaries of Gunnison River. No storage facilities would be required to provide an adequate water supply for lands of the project.

Fruit Growers' Extension

The Fruit Growers' Dam project extension would utilize surplus flows of Grand Mesa tributaries of the Gunnison River in the Upper Colorado River Basin to provide supplemental irrigation water for 2,000 acres of presently irrigated lands and a new water supply for 1,850 acres of nonirrigated lands.

Fruitland Mesa

The Fruitland Mesa project would provide a water supply for 11,700 acres of arable nonirrigated land and supplemental water for 7,700 acres of presently irrigated land between the town of Crawford and the Black Canyon of the Gunnison National Monument. The water supply would be made available from Sapinero, Curecanti, Crystal, and Iron Creeks, tributaries of Gunnison River in the Upper Colorado River Basin.

Grand Mesa

The Grand Mesa project would provide a water supply for 11,070 acres of arable nonirrigated land and supplemental water for 14,230 acres of irrigated land in the Gunnison River drainage of the Upper Colorado River Basin. These acreages include nearly all of the lands along the south slope of Grand Mesa except lands included in the service areas of the potential Paonia project and the Fruit Growers Dam project extension. The water supply for the project would be made available from Muddy Creek and other Grand Mesa tributaries of Gunnison River.

Navajo

The Navajo project (formerly called the Shiprock and south San Juan projects) is in northwestern New Mexico along the San Juan River. The project would provide for the irrigation of 151,000 acres of new lands in the vicinity of the towns of Bloomfield, Farmington, and Shiprock. Of that total, 122,000 acres are located in the Navajo Indian Reservation and 29,000 acres are outside the reservation. A main high-line canal from the Navajo Reservoir would extend 28 miles to a drop and direct-connected turbine pump for service of highlands and then 60 miles to serve the major portion of the lands by gravity. A distribution system and drains also are planned. With respect to the authorization of this project, see section 2 of the bill.

Ohio Creek

The Ohio Creek project would provide for the irrigation of 6,200 acres of arable nonirrigated land and 10,710 acres of irrigated land in need of additional water. The source of the water would be Ohio Creek, a Gunnison River tributary in the Upper Colorado River Basin.

Parshall

The Parshall project would provide for the full irrigation of 24,410 acres of new land and would supply supplemental water to 3,100 acres of partially irrigated land along Williams River, Little Muddy Creek, and the lower east side of the Blue River Valley in the vicinity of the communities of Parshall and Kremmling, Grand and Summit Counties in north-central Colorado. The project would also aid in fishery and wildlife conservation.

Rabbit Ear

The Rabbit Ear project in Grand County, north-central Colorado, would regulate surplus runoff of Muddy Creek, tributary to the Colorado River near Kremmling, Colo., to provide for the irrigation of 13,955 acres of new service land and 5,235 acres of supplemental service land. The project lands are located in the Muddy Creek drainage, south and west of Kremmling. The project would also provide some flood-control benefits and also increase fishery and wildlife values.

San Juan-Chama

The San Juan-Chama project would be located in northern New Mexico partly in the San Juan Basin of southern Colorado and partly in the Rio Grande and Canadian River Basins in northern New Mexico. This project would provide for a maximum diversion of 235,000 acre-feet of water annually from the headwaters of the San Juan River through a collection system and a tunnel to the headwaters of the Chama, a tributary of the Rio Grande. An off-channel holding and regulatory reservoir would be provided on the Chama watershed. The water would be delivered to the agricultural users through the distribution systems of existing projects. With respect to the authorization of this project, see section 2 of the bill.

Savery-Pot Hook

The Savery-Pot Hook project would provide supplemental irrigation water for 13,230 acres of presently irrigated lands and a new supply for 18,380 acres of nonirrigated lands located in northwestern Colorado and south-central Wyoming. The additional water would be made available through utilization of surplus flows of streams of the Little Snake River Valley, a part of the Upper Colorado River Basin.

Sublette

The Sublette project is planned to store and divert waters of the upper Green River and its tributaries to supply irrigation water for about 72,000 acres of undeveloped lands and 12,000 acres of lands presently irrigated with an inadequate supply. The plan also includes a small hydroelectric powerplant. The project would be located in the Green River Basin in Sublette County, western Wyoming. Although reconnaissance studies to date indicate that the project would consist of two independent divisions (Buckskin and West Side divisions), the data presented herein are for the overall project.

Tomichi Creek

The Tomichi Creek project would provide supplemental irrigation water for 15,400 acres of presently irrigated land and a new supply

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for 12,180 acres of arable nonirrigated land located east of the town of Gunnison near the Continental Divide. Water would be made available from Tomichi and Quartz Creeks, tributaries of Gunnison River in the Upper Colorado River Basin.

Troublesome

The Troublesome project in Grand County, north-central Colorado, would regulate surplus runoff in East Troublesome Creek, tributary to the Colorado River, and would divert surplus flows of the Williams River at the existing Williams Reservoir to provide for the irrigation of 8,990 acres of new land and 4,650 acres of supplemental service land. The project lands are located in the Troublesome Creek Valley and on river benches north of the Colorado River between the towns of Parshall and Kremmling, Colo. The project would also increase fishery, wildlife, and recreational values of the area.

West Divide

The West Divide project would regulate and divert surplus runoff of Crystal River, Thompson Creek, West Divide Creek, and Mamm Creek and would divert surplus runoff of several tributaries of the Roaring Fork and Colorado Rivers in order to provide for the irrigation of 40,500 acres of new land and 25,110 acres of supplemental service land. The lands are located along the west side of the Roaring Fork drainage in the vicinity of Carbondale and Glenwood Springs, Colo., and along the south side of the Colorado River Valley in the vicinity of the towns of New Castle, Silt, Rifle, Grand Valley, and DeBeque, Colo. The project area is contained in Pitkin, Garfield, and Mesa Counties, west-central Colorado.

Woody Creek

The Woody Creek project would provide an average of 3,900 acre-feet of water annually for the irrigation of 645 acres of new service land and 2,320 acres of supplemental service land located along the east side of the Roaring Fork River Valley and north of the town of Aspen, Pitkin County, west-central Colorado.

7. OTHER FEATURES OF THE BILL

The Committee recognizes that it may be found desirable to authorize additional storage in the upper reaches of the Colorado River and its tributaries above Grand Junction, Colo., and of additional participating projects in the several upper division States (see sec. 2 of the bill); but it recommends deferment of any commitment by the Congress thereto, due to the fact that engineering reports are not complete.

The bill contains a provision authorizing the appropriate agencies of the United States to convey for value to the city and county of Denver, Colo., water rights and interests in lands required for the enlargement of that city's municipal water supply.

The Committee believes that the Colorado River storage project and participating projects plan is financially sound. It has been subjected to the most rigid economic and financial analyses. Less than 3 percent of the total cost is nonreimbursable for flood control, fish and wildlife, and recreation.

The entire cost of the power and municipal water features will be returned to the United States Treasury with interest not only on the capital investment but also with interest accruing during their construction. Interest would be computed at the going rate for long-term Treasury obligations. The irrigation costs do not bear interest, pursuant to the 50-year-old policy of the reclamation law. The Federal Government has recognized that the development of irrigated lands stabilizes the agricultural economy and is a good public investment.

Section 3 of the bill, relating to water conservancy districts, takes into account the indirect benefits that will accrue to the general areas served by these projects. Indirect beneficiaries in the service areas of these projects would thereby aid in the repayment of irrigation costs. The irrigation farmers would be assesssed, according to their ability to pay over a 50-year period, and the balance of the costs allocated to irrigation would be repaid by power revenues. Safeguards are contained in the bill to obviate initiation of construction of participating projects prior to a thorough review of their economic justification.

The committee concurs in the view expressed by the Civil Defense Administrator, that the Colorado River storage project will be an important factor in an industrial and human dispersal program in the event of a national emergency. This vital factor gives added nationwide importance to this development, in addition to broadening the Federal tax base, increasing purchasing power, and thereby providing an expanding home market for the products of American manufacturing and other enterprises.

The committee's position on power marketing of the project is that the area to be served shall be governed only by economical transmission distance direct or through interconnections with other plants either in the Upper or Lower Basin. This policy is necessary to the economic and financial health of the project. This policy in the committee's opinion accords with established practice and policies of reclamation power operations. The committee intends that full equality of treatment be accorded to both Upper and Lower Basin power customers. Established preferences and sound business principles in accordance with existing reclamation law are intended to be applied in the marketing of power from the project, and it is not intended that Lower Basin customers should be discriminated against in any respect.

The principal amendments recommended are for the purpose of clarification only and relate, first, to the inclusion of 19 additional participating projects in Colorado and Wyoming which can be constructed only after submittal of feasibility reports, and approval and authorization by the Congress. Section 2 is revised to declare that it is not the intention of Congress by authorizing only certain designated projects at this time to preclude future comprehensive water resource developments in the Upper Basin. A provision is included for consultation by the Secretary of the Interior with an Advisory Committee in connection with the operation of works in the Colorado River.

Section 12 of the bill would grant consent to suits against the United States in the Supreme Court by States in the Colorado River Basin to enforce the provisions of specifically named compacts,

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projects, Federal statutes, and treaties relating to the release of water from reservoirs in the basin. In order to make certain that the immunity waiver would permit such suits both in a State's own quasi-sovereign capacity and on behalf of those of its political subdivisions that might have water rights under the compacts, projects, or statutes enumerated, the committee amended the section to give legislative recognition to the established judicial doctrine of *parens patriae*.

The waiver of the sovereign immunity of the United States goes only to suits brought by the basin States and not to suits by any other political entity; action would have to be brought by the State itself, and determination as to whether to bring action as *parens patriae* would rest with the State.

For an exposition of the *parens patriae* doctrine, as it relates to the original jurisdiction of the Supreme Court, reference is made to such cases as *Georgia* v. *Pennsylvania Railroad Co. et al.* (324 U. S. 401; 1945); *Kansas* v. *Colorado* (206 U. S. 46; 1906); or *Missouri* v. *Illinois* (180 U. S. 208; 1900).

8. ESTIMATED OVERALL CONSTRUCTION COSTS

The estimated overall construction costs of the projects under each of the several categories set forth in S. 500, as amended, are as follows:

Storage units:	
Authorized for construction (5)	$733, 578, 000
Authorized subject to report to Congress (1)	49, 305, 000
Total storage units (6)	782, 883, 000
Participating projects: Authorized subject to supplemental reports (12)	310, 116, 800
Total projects authorized in S. 500, as amended	1, 092, 999, 800
Participating projects:	
Subject to further approval and authorization by Congress (21)	558, 173, 300
Total all participating projects in S. 500, as amended	868, 290, 100
Project, previously authorized, participating in revenue (1)	7, 287, 000
Total all participating projects (34)	875, 577, 100
Grand total, all projects in S. 500, as amended	1, 658, 460, 100

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9. SUMMARY, CONSTRUCTION COSTS AND ALLOCATIONS, COLORADO RIVER STORAGE PROJECT AND PARTICIPATING PROJECTS

Project	State	Construction costs					Repayment of reimbursable costs [2]	
		Total [1]	Nonreimbursable	Reimbursable allocations			By water users [3]	By power
				Power	Municipal water	Irrigation		
Storage units:								
Authorized for construction under S. 500:								
Echo Park	Colorado-Utah	$176,426,000		$128,383,000		$48,043,000		$176,426,000
Glen Canyon	Arizona-Utah	421,270,000		370,974,000		50,296,000		421,270,000
Juniper	Colorado	16,348,000		16,348,000				16,348,000
Flaming Gorge	Utah-Wyoming	82,942,000		52,042,000		30,900,000		82,942,000
Navajo Dam	New Mexico	36,592,000	$1,298,000			35,294,000		35,294,000
Subtotal		733,578,000	1,298,000	567,747,000		164,533,000		732,280,000
Authorized subject to report to the Congress:								
Curecanti (940,000 acre-feet)	Colorado	49,305,000		41,205,000		8,100,000		49,305,000
Total storage units		782,883,000	1,298,000	608,952,000		172,633,000		781,585,000
Participating projects:								
Authorized subject to supplemental reports:								
LaBarge	Wyoming	1,673,300				1,673,300	$495,000	1,178,300
Seedskadee	do	23,272,000				23,272,000	4,785,000	18,487,000
Lyman	do	10,564,000				10,564,000	2,255,000	8,309,000
Silt	Colorado	3,356,000	73,600			3,282,400	1,020,000	2,262,400
Smith Fork	do	3,367,000	24,000			3,343,000	1,045,000	2,298,000
Paonia	do	[4] 6,944,000	152,400			6,791,600	2,414,000	4,377,600
Florida	do	6,941,500	437,900			6,503,600	1,711,500	4,792,100
Pine River project extension	Colorado-New Mexico	5,027,000				5,027,000	2,045,000	2,982,000
Emery County	Utah	9,865,500	229,000			9,636,500	3,715,000	5,921,500
Central Utah (initial phase)	do	231,044,000	5,991,000	46,699,000	45,500,000	127,354,000	[5] 60,691,000	[6 7] 158,862,000
Hammond	New Mexico	2,302,000				2,302,000	370,000	1,932,000
Gooseberry	Utah	5,760,500	33,000			5,727,500	2,375,000	3,352,500
Subtotal		310,116,800	6,940,900	46,699,000	45,500,000	205,476,900	82,921,500	[7] 214,754,400
Total projects authorized in S. 500, as amended		1,092,999,800	8,238,900	655,651,000	45,500,000	378,109,900	82,921,500	996,339,400

Participating projects subject to further au-

Participating projects subject to further approval and authorization by the Congress:								
Navajo irrigation project	New Mexico	175,445,300				175,445,300	30,730,000	144,715,300
San Juan-Chama	do	134,369,000	470,000		26,775,000	107,124,000	54,665,000	79,234,000
Savery-Pot Hook	Colorado-Wyoming	10,814,000				10,814,000	1,390,000	9,424,000
Dolores	Colorado	24,633,000				24,633,000	1,533,000	23,100,000
Sublette, Gunnison River projects	Wyoming	37,099,000		953,000		36,146,000	1,350,000	35,749,000
Fruit Growers Dam extension	Colorado	1,690,000				1,690,000	470,000	1,220,000
Bostwick Park	do	2,634,000				2,634,000	695,000	1,939,000
Dallas Creek	do	10,330,000				10,330,000	950,000	9,380,000
East River	do	212,000				212,000	95,000	117,000
Fruitland Mesa	do	11,551,000				11,551,000	1,060,000	10,491,000
Grand Mesa	do	20,164,000				20,164,000	30,000	20,134,000
Ohio Creek	do	3,402,000				3,402,000	35,000	3,367,000
Tomichi Creek, Cliffs-Divide projects	do	11,523,000				11,523,000	0	11,523,000
Battlement Mesa	do	5,853,700				5,853,700	645,000	5,208,700
Bluestone	do	3,329,900				3,329,900	370,000	2,959,900
Eagle Divide	do	3,411,700				3,411,700	305,000	3,106,700
Parshall	do	11,881,900				11,881,900	1,420,000	10,461,900
Rabbit Ear	do	4,733,500				4,733,500	760,000	3,973,500
Troublesome	do	5,243,000				5,243,000	725,000	4,518,000
West Divide	do	79,675,600				79,675,600	5,960,000	73,715,600
Woody Creek	do	177,700				177,700	177,700	0
Subtotal		558,173,300	470,000	953,000	26,775,000	529,975,300	103,365,700	454,337,600
Total all participating projects in S. 500, as amended.		868,290,100	7,410,900	47,652,000	72,275,000	735,452,200	186,287,200	[7] 669,092,000
Eden project (previously authorized)	Wyoming	7,287,000				7,287,000	1,500,000	5,787,000
Total all participating projects		875,577,100	7,410,900	47,652,000	72,275,000	742,739,200	187,787,200	[7] 674,879,000
Grand total, all projects in S. 500, as amended.		1,658,460,100	8,708,900	656,604,000	72,275,000	915,372,200	187,787,200	[7] 1,456,464,000

[1] Exclusive of nonreimbursable Colorado River development fund expenditures for investigations.

[2] Costs allocated to power and municipal water are repaid with interest, including interest during construction.

[3] Repayment by water users toward construction costs over 50-year repayment period beyond a reasonable irrigation development period except 60-year period for Eden project and 68-year period for Paonia project.

[4] Includes $2,035,000 expended on construction of the previously authorized Paonia project.

[5] Includes $15,191,000 in irrigation revenues and $45,500,000 from municipal and industrial water users.

[6] Includes $27,838,000 of excess power revenues from the Central Utah project powerplants accruing during the irrigation repayment periods of this project.

[7] Exclusive of $5,500,000 allocable to purposes of the ultimate phase of Central Utah project.

10. EXECUTIVE REPORTS

The comments of the Departments of the Army, Interior, and Agriculture, including endorsements by the President, the Bureau of the Budget, and the Federal Power Commission are made a part of this report, as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., February 25, 1955.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.

MY DEAR SENATOR MURRAY: A report has been requested from this Department on S. 500, a bill to authorize the Secretary of the Interior to construct, operate, and maintain the Colorado River storage project and participating projects, and for other purposes.

In his address to the Congress on the state of the Union, President Eisenhower said (H. Doc. No. 1, 84th Cong., p. 8):

"* * * the Federal Government must shoulder its * * * partnership obligations by undertaking projects of such complexity and size that their success requires Federal development. In keeping with this principle I again urge the Congress to approve the development of the upper Colorado River Basin to conserve and assure better use of precious water essential to the future of the West."

Likewise in his budget message (H. Doc. No. 16, 84th Cong., p. M65) the President said:

"I also recommend enactment of legislation authorizing the Bureau of Reclamation to undertake construction of two comprehensive river-basin improvements which are beyond the capacity of local initiative, public or private, but which are needed for irrigation, power, flood control, and municipal and industrial water supply. These are the Upper Colorado River Basin development in the States of Colorado, Utah, Wyoming, Arizona, and New Mexico, and the Fryingpan-Arkansas development in Colorado. The Colorado River development will enable the upper basin States to conserve floodwaters and to assure the availability of water and power necessary for the economic growth of the region. * * * Sale of power generated at these developments will repay the power investment within 50 years and will make a contribution toward repayment of other investments."

In the budget itself it was pointed out (p. 830) that the administration proposes to initiate construction of the Colorado River storage project during the next fiscal year if it is authorized and that the budget includes an item for funds to be requested for this purpose.

The substance of our views on the proper contents of a bill to implement the President's recommendation and particularly on those projects and units which should be covered in the initial legislation is contained in the draft of a bill which was developed by the Bureau of the Budget in collaboration with this Department and submitted to your committee on April 1, 1954, in connection with S. 1555, 83d Congress, a predecessor of the present S. 500.

We recommend that S. 500 be examined in the light of the proposal there made and in the light of the two letters dated March 18, 1954, from the Director of the Bureau of the Budget to your committee and to this Department which are reprinted in Senate Report No. 1983, 83d Congress, and that, with suitable amendments, S. 500 be enacted.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to your committee.

Sincerely yours,

FRED G. AANDAHL,
Assistant Secretary of the Interior.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., March 17, 1955.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: This will acknowledge Mr. Stewart French's letter of January 20, 1955, requesting the views of the Bureau of the Budget on S. 500,

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a bill to authorize the Secretary of the Interior to construct, operate, and maintain the Colorado River storage project and participating projects, and for other purposes.

Enactment of legislation authorizing the Colorado River storage project was recommended by the President both in his state of the Union message and his budget message this year. The views of this Bureau concerning the details of such legislation were expressed in letters of March 18, 1954, to your committee and to the Secretary of the Interior, which are printed in Senate Report No. 1983, 83d Congress, 2d session. On April 1, 1954, a draft bill, which was developed in collaboration with the Department of the Interior, was submitted to your committee.

With respect to the detailed provisions of S. 500, this Bureau has the following comments:

1. In the absence of new information justifying their inclusion at this time we have no basis for reappraising the merits of those projects heretofore considered and not recommended for authorization either by the Secretary of the Interior or the Bureau of the Budget. Similarly, in the absence of detailed planning reports for those projects not heretofore considered by the Bureau of the Budget, including data on engineering, financial, and economic feasibility, detailed estimates of costs and benefits, and sufficient other pertinent information necessary for a complete understanding of the justification and necessity for the work, there is no adequate basis for appraising the merits of such projects. For these reasons we believe that the authorizations for the Cross Mountain, Flaming Gorge, Curecanti, and Navajo units, and the Gooseberry, San Juan-Chama, and Navajo participating projects should be deferred until the necessary information justifying such action has been submitted to the Congress in accordance with established procedures.

2. There would appear to be ample justification for the closest cooperation between the Departments of Agriculture and Interior concerning the agricultural aspects of the participating projects. The use of the word "consultation" on page 3, line 25, would therefore be understood to mean consultation in its broadest sense.

3. Section 7 and reference to it in section 1 (2) (a) (iii) is interpreted to mean that all costs for improvements in fish and wildlife, as well as mitigation of losses not attributable to the construction of the project, shall be nonreimbursable and nonreturnable and shall be financed by the agencies responsible for these programs. However, the cost of preventing damages attributable to the construction of the project should be treated as a part of the cost and allocated to the various purposes in the same manner as other damages. The addition of clarifying language would avoid misinterpretations.

4. The inclusion of section 10 in our draft bill referred to above, namely, "Construction of the projects herein authorized shall proceed as rapidly as is consistent with budgetary requirements and the economic needs of the country," would appear to be a desirable addition to S. 500, since this would be the principal consideration in determining rate of construction and development.

5. It is considered that the authorization should be limited to $950 million, as proposed in the draft bill, in order to give the Congress a greater measure of control over the extent of the development and an opportunity to review the program from time to time.

6. Since we do not have detailed information concerning the city of Denver's proposed Blue River project or the effects of the provisions of section 11 of S. 500 on the interests of the Federal Government or on pending litigation, we are not in a position to comment on this section at this time, and have requested the Department of Justice to review this section.

7. The Bureau of the Budget also is not in a position to comment on section 12, until we have received the views of the Department of Justice on this section.

8. It is recommended that the title be amended to read, "To authorize the Secretary of the Interior to construct, operate, and maintain initial units of the Colorado River storage project and participating projects, and for other purposes."

Accordingly, it is recommended that S. 500 be amended as outlined above.

Sincerely yours,

DONALD R. BELCHER,
Assistant Director.

FEDERAL POWER COMMISSION,
Washington 25, March 25, 1955.

Re S. 500, 84th Congress, 1st session.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.

DEAR MR. CHAIRMAN: In response to your request there are enclosed three copies of the report of the Federal Power Commission on the bill S. 500, 84th Congress, to authorize the Secretary of the Interior to construct, operate, and maintain the Colorado River storage project and participating projects, and for other purposes.

We have just been advised that there is no objection by the Bureau of the Budget to the presentation of this report to your committee.

Sincerely yours,

JEROME K. KUYKENDALL, *Chairman.*

FEDERAL POWER COMMISSION REPORT ON S. 500, 84TH CONGRESS

A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO CONSTRUCT, OPERATE, AND MAINTAIN THE COLORADO RIVER STORAGE PROJECT AND PARTICIPATING PROJECTS, AND FOR OTHER PURPOSES

Section 1 of the bill would authorize the Secretary of the Interior to construct, operate, and maintain the Cross Mountain, Curecanti, Echo Park, Flaming Gorge, Glen Canyon, and Navajo initial units of the Colorado River storage project, consisting of dams, reservoirs, powerplants, transmission facilities, and appurtenant works, provided that the authority to construct the Curecanti Dam shall not be undertaken until the Secretary has, on the basis of further engineering and economic investigations, reexamined the economic justification of such unit and, accompanied by appropriate documentation in the form of a supplemental report, has certified to the Congress and to the President that, in his judgment, the benefits of such unit will exceed its costs. The Commission believes that such conditional authorization of the Curecanti project is highly desirable, and that it would be desirable to amend the bill to likewise require conditional authorization with respect to undertaking construction of the Cross Mountain, Flaming Gorge, and Navajo projects.

Based upon a consideration of the power features involved, it is believed that authorization of the Echo Park and Glen Canyon Dam and Reservoir projects, as provided for in the bill, is desirable for inclusion in the initial program for future development of the Colorado River Basin. The Echo Park project is favorably located to assist in serving power loads of the northerly part of the Upper Colorado River Basin, and the Glen Canyon project is favorably located for assisting in serving power loads to the south.

Section 1 of the bill would also authorize 14 enumerated participating reclamation and power projects provided that the construction of the participating projects shall not be undertaken until the Secretary has reexamined the economic justification of each project and, accompanied by appropriate documentation in the form of a supplemental report, has certified to the Congress, through the President, that, in his judgment, the benefits of such project will exceed its costs, and that the financial reimbursability requirements set forth in section 4 of the bill can be met. Such supplemental reports, except for San Juan-Chama and the Navaoj projects, would not, however, be subject to section 1 (c) of the Flood Control Act of 1944 (58 Stat. 887) which provides that the Secretary of the Interior, in making investigations and reports for irrigation and purposes incidental thereto, shall give the affected State or States opportunity to cooperate in the investigations. The Commission agrees that authorization of these participating reclamation and power projects should be made conditional on the findings and recommendations of supplemental detailed reports dealing with their economic and engineering feasibility, as provided for in the bill, but it does not feel that the public interest requires or justifies the exemption of such supplemental reports from the opportunity for State cooperation afforded by section 1 (c) of the Flood Control Act of 1944.

Section 2 of the bill declares it to be the intent of Congress to authorize further units of the storage project and new participating projects upon the basis of the data which may be made available to it in the future in accordance with this bill and also in conformity with beneficial consumptive use provisions of article III

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of the Upper Colorado River Basin compact. The costs of any participating projects thus authorized shall be amortized in accordance with the Federal reclamation law and this bill.

Section 4 provides that revenues in excess of operating needs shall be paid annually to the general fund of the Treasury to return the costs of each unit, participating project, or any separable feature thereof which are allocated to commercial power within a period not exceeding 50 years from the date of completion of such unit, participating project, or separable feature thereof. It also provides that revenues in excess of operating needs shall be paid annually to the general fund of the Treasury to return interest on the unamortized balance of the investment (including interest during construction) in the commercial power features of each unit, participating project, or any separable feature thereof, at a rate determined by the Secretary of the Treasury as of the time the first advance is made for initiating construction of said unit or project. These repayment provisions correspond generally with the Commission's established practice in analyzing and evaluating Federal multiple-purpose power projects of assuming amortization of power investments in not to exceed 50 years from the in-service date, with interest, usually at the rate of 2½ percent.

Section 5 provides that upon completion of each unit, participating project, or separable feature thereof, the Secretary of the Interior shall allocate the total costs (excluding certain nonreimbursable costs for recreation and fish and wildlife) of constructing said unit, project, or feature to power, irrigation, municipal water supply, flood control, navigation, or any other purposes authorized under reclamation law. The Commission believes that the bill should provide for such cost allocations to be made in conformity with those standards and procedures which may have been established for interagency use at that time.

Section 5 also provides that the Secretary would be required to report to the Congress, on January 1 of each year beginning with the fiscal year 1956, upon the status of the revenues from and the cost of constructing, operating, and maintaining the Colorado River storage project and the participating projects. The Secretary's report would be prepared to reflect accurately the Federal investment allocated at that time to power, to irrigation, and to other purposes, the progress of return and repayment thereon, and the estimated rate of progress, year by year, in accomplishing full repayment. This requirement of periodic detailed reports on the financial aspects of the proposed improvements appears to be highly desirable.

In several statutes (e. g., sec. 5, act of December 22, 1944, 58 Stat. 887, 890; act of July 31, 1950, 64 Stat. 382) Congress has provided that the rate schedules for power sales from certain Federal power projects shall be subject to approval by the Federal Power Commission. The Commission is of the opinion that similar rate control should be provided in this instance and that it should be authorized not only to approve the initial rate schedules, but should have authority to review the rates at appropriate intervals and prescribe those rates which will return to the United States the costs which are properly chargeable to power under the criteria laid down by Congress. It should be noted that the Commission is not an operating agency, but was created by Congress to act as its agent to perform functions directly related to the rate supervision here recommended.

The Commission believes that the authority to determine the portion of the investment in multiple-purpose projects allocable to electric power should rest with the agency responsible for the approval of electric power rates. In this connection, the Commission points out that it has been given authority to make cost allocations for the Bonneville and McNary projects on the Columbia River, the Fort Peck project on the Missouri river, and four proposed projects on the lower Snake River.

If the Congress should see fit to enact this legislation, it is recommended that the Commission be given jurisdiction over rates for the sale of power from the projects in the Colorado River Basin and authority to allocate the costs of such projects among the several project purposes. The Commission also recommends that authorization to undertake construction of the Cross Mountain, Flaming Gorge, and Navajo projects be made conditional upon supplemental investigation reports by the Secretary of the Interior, and that section 1 (c) of the Flood Control Act of 1944, relating to opportunity for State participation, be made applicable to supplemental reports of the Secretary on participating projects.

FEDERAL POWER COMMISSION,
By JEROME K. KUYKENDALL,
Chairman.

DEPARTMENT OF AGRICULTURE,
Washington 25, D. C., March 28, 1955.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate.

DEAR SENATOR MURRAY: This is in reply to Mr. Stewart French's letter of January 21, 1955, requesting a report by this Department on S. 500, a bill to authorize the Secretary of the Interior to construct, operate, and maintain the Colorado River storage project and participating projects, and for other purposes.

Since S. 500 relates primarily to Department of the Interior authority, this Department takes no position regarding enactment of the bill. However, in the event favorable consideration is given to such legislation, we recommend (1) that it provide for cooperation by the Secretary of Agriculture with the Secretary of the Interior in the appraisal, before authority to construct projects becomes effective, of the prospective direct agricultural benefits of each proposed project that is expected to produce such benefits; and (2) that it provide that the Secretary of Agriculture shall be granted the same authorities as the Secretary of the Interior under the provisions of section 7 when any unit or project is within or partly within the boundary of a national forest.

The bill would authorize the Secretary of the Interior to construct, operate, and maintain 6 specified initial units of the Colorado River storage project, consisting of dams, reservoirs, powerplants, transmission facilities, and appurtenant works and, after reexamination of the economic justification of each such project including a reappraisal of the prospective direct agricultural benefits after consultation with the Secretary of Agriculture, 14 other specified participating projects. It would declare the intent of the Congress to authorize additional units of the Colorado River storage project and additional participating projects. It also would authorize the Secretary of the Interior to plan, construct, operate, and maintain public recreational facilities on lands withdrawn or acquired for Colorado River storage project units and participating projects.

In reporting to the Committee on Interior and Insular Affairs on June 30, 1954, on S. 1555 we referred to a substitute draft bill submitted to the Congress by the Secretary of the Interior on April 1, 1954. It provided for a reappraisal of the prospective direct agricultural benefits of the project, made by the Secretary of the Interior in cooperation with the Secretary of Agriculture. We consider that provision to more clearly express the relationship that should prevail in such a reappraisal than the provision for consultation included in S. 500.

The Department of Agriculture has a responsibility, commensurate with its national responsibilities, in the agricultural phases of the development, conservation, and utilization of land and water in the Upper Colorado River Basin which would be authorized by such bills. This includes the furnishing of reports to the President and the Congress on the agricultural aspects concurrently with reports by other agencies on other aspects of the proposed developments and the planning, operation, and maintenance of public recreational facilities on those portions of storage project units or participating projects that are within national forest boundaries.

The Bureau of the Budget advises there is no objection to the submission of this report.

Sincerely yours,

TRUE D. MORSE, *Under Secretary.*

DEPARTMENT OF THE ARMY,
Washington 25, D. C., April 6, 1955.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to S. 500, 84th Congress, a bill to authorize the Secretary of the Interior to construct, operate, and maintain the Colorado River storage project and participating projects, and for other purposes.

The Department of the Army has considered the above-mentioned bill. The purpose of the bill is to authorize the principal features of the Colorado River storage project and participating projects of the Bureau of Reclamation.

Comments on four of the major units (Cross Mountain, Flaming Gorge, Navajo, and Curecanti) in the comprehensive plan covered by S. 500 and on the participating projects are not practicable from an engineering and economic standpoint

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without an up-to-date engineering and economic report. However, with respect to the two remaining major units (Echo Park and Glen Canyon), the Department of the Army has reviewed a report of the Department of the Interior and has advised that Department that these two storage projects appear to be justified.

Although the Department of the Army is authorized to undertake certain examinations and surveys in the Upper Colorado River Basin and has an interest in the Rio Grande Basin which is involved in the bill to the extent of the diversion contemplated in one of the participating projects, there appears to be no basic conflict between the project units proposed in the bill and any which the Department now has or might have an interest in as a result of future investigation or construction. However, because of the departmental interest in flood control and navigation, it is recommended that the bill be amended in the following manner:

(1) In section 1, page 4, lines 8–10, strike the portion beginning with the comma in line 8 and extending through the word "not" in line 10 in order that section 1 (c) of the Flood Control Act of 1944, having to do with consultation with affected States and the Secretary of the Army and providing for comment by those parties, will be made applicable to supplemental reports on participating projects;

(2) In section 1, page 4, line 15, after "affected States", insert "and the Secretary of the Army";

(3) In section 3, page 6, line 12, after "*Provided,*" insert "That allocation of costs to flood control or navigation as nonreimbursable costs shall be determined by the Secretary after consultation with the Chief of Engineers and the Secretary of the Army and any necessary investigations or studies therefor may be performed under a cooperative agreement with the Secretary of the Army: *Provided further,*".

In connection with S. 500, the attention of your committee is invited to draft legislation which was submitted by the Secretary of the Interior to the 83d Congress on April 1, 1954, and which is set forth at pages 13–16 of Senate Report 1983 on S. 1555 of the 83d Congress. The draft bill was intended to bring proposed authorizing legislation into correlation with the project report referred to above in that it would authorize only the Echo Park and Glen Canyon storage units, and, as S. 500 does, would grant provisionsl authorization only for certain of the participating projects. To the extent that the bill authorizes only these two major storage units, the Department of the Army considers the draft bill as being preferable to S. 500 and offers no objection to the authorization of the improvements proposed in the draft legislation. However, the suggestions in (1) and (3) above would apply as well to the draft bill, with the exception that the language in (3) would be inserted in the fifth line of section 3 at page 14 of the above-mentioned Senate report, and an appropriate deletion similar to (1) above would be made in the last line of section 1 at page 13 of the Senate report.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

CHARLES C. FINUCANE,
Acting Secretary of the Army.

11. THE COMMITTEE AMENDMENTS

For the information of the sponsors of S. 500 and for the other Members of the Senate, the text of the measure as introduced with each change shown in *italic* is set forth below. The specific amendments are numbered and each is explained individually immediately following the text of the amended bill.

(S. 500 as introduced is shown in Roman type. Amendments by the Committee on Interior and Insular Affairs to S. 500 as introduced, are numbered and shown in *italic.*)

[S. 500, 84th Cong., 1st sess.]

[Omit the part struck through and insert the part printed in *italic*]

A BILL To authorize the Secretary of the Interior to construct, operate, and maintain the Colorado River storage project and participating projects, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in order to initiate the comprehensive development of the water resources of the Upper Colorado River Basin, the

Congress, in the exercise of its constitutional authority to provide for the general welfare, to regulate commerce among the States and with the Indian tribes, and to make all needful rules and regulations respecting property belonging to the United States, and for the purposes, among others, of regulating the flow of the Colorado River, storing water for beneficial consumptive use, [1] ~~making it possible for the States of the Upper Basin to utilize~~ *commencing a program for utilization in the States of the Upper Basin*, consistently with the provisions of the Colorado River Compact, the apportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively, providing for the reclamation of arid and semiarid land, for the control of floods and for the improvement of navigation, and the generation of hydroelectric power, as an incident of the foregoing purposes, hereby authorizes the Secretary of the Interior (1) to construct, operate, and maintain the following initial units of the Colorado River storage project, consisting of dams, reservoirs, powerplants, transmission facilities and appurtenant works: [2] ~~Cross Mountain,~~ Curecanti, Echo Park, Flaming Gorge, Glen Canyon, [3] *Juniper*, and Navajo: *Provided*, That the Curecanti Dam shall be constructed to a height which will impound not less than nine hundred and forty thousand acre-feet of water or will create a reservoir of such greater capacity as can be obtained by a high waterline located at seven thousand five hundred and twenty feet above mean sea level [4] *and approved by the Colorado Water Conservation Board*, and that construction thereof, [5] *and of the Juniper unit*, shall not be undertaken until the Secretary has, on the basis of further engineering and economic investigations, reexamined the economic justification of [6] ~~such~~ each unit and, accompanied by appropriate documentation in the form of a supplemental report, has certified to the Congress and to the President that, in his judgment, the benefits of [7] ~~such~~ *each* unit will exceed its costs; and (2) to construct, operate, and maintain the following additional reclamation projects (including power-generating and transmission facilities related thereto), hereinafter referred to as participating projects: Central Utah (initial phase); Emery County, Florida, Gooseberry, Hammond, La Barge, Lyman, Paonia (including the Minnesota unit, a dam and reservoir on Muddy Creek just above its confluence with the North Fork of the Gunnison River, and other necessary works), Pine River Extension, Seedskadee, Silt, Smith Fork, San Juan-Chama, Navajo, [8] *Parshall, Troublesome, Rabbit Ear, Eagle Divide, Woody Creek, West Divide, Bluestone, Battlement Mesa, Tomichi Creek, East River, Ohio Creek, Fruitland Mesa, Bostwick Park, Grand Mesa, Dallas Creek, Savery-Pot Hook, Dolores, Fruit Growers Extension, and Sublette*: *Provided*, That [9] ~~(a)~~ construction of the participating projects set forth in this clause (2) shall not be undertaken until the Secretary has reexamined the economic justification of such project and, accompanied by appropriate documentation in the form of a supplemental report, has certified to the Congress, through the President, that, in his judgment, the benefits of such project will exceed its costs, and that the financial reimbursability requirements set forth in section 4 of this Act can be met. The Secretary's supplemental report for each such project shall include, among other things, (i) a reappraisal of the prospective direct agricultural benefits of the project made by the Secretary after consultation with the Secretary of Agriculture; (ii) a reevaluation of the nondirect benefits of the project; and (iii) allocations of the total cost of construction of each participating project or separable features thereof, excluding any expenditures authorized by section 7 of this Act, to power, irrigation, municipal water supply, flood control or navigation, or any other purpose authorized under reclamation law. [10] ~~Section 1 (c) of the Flood Control Act of 1944 shall, except as hereinafter provided for the San Juan-Chama and the Navajo participating projects, not be applicable to such supplemental reports; and, (b) that no appropriation for or construction of the San Juan-Chama project or the Navajo participating project shall be made or begun until coordinated reports thereon shall have been submitted to the affected States, including (but without limiting the generality of the foregoing) the State of Texas, pursuant to the Act of December 22, 1944, and said projects shall have been approved and authorized by the Congress~~ *Except as hereinafter provided, section 1 (c) of the Flood Control Act of 1944 shall not be applicable to such supplemental reports: Provided further, That with respect to the San Juan-Chama, Navajo, Parshall, Troublesome, Rabbit Ear, Eagle Divide, Woody Creek, West Divide, Bluestone, Battlement Mesa, Tomichi Creek, East River, Ohio Creek, Fruitland Mesa, Bostwick Park, Grand Mesa, Dallas Creek, Savery-Pot Hook, Dolores, Fruit Growers Extension, and Sublette participating projects no appropriation for or construction of such participating projects shall be made or begun until coordinated reports thereon shall have been submitted to the affected States (which in the case of*

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the San Juan-Chama and Navajo participating projects shall include the State of Texas), pursuant to the Act of December 22, 1944, and such participating projects shall have been approved and authorized by Act of Congress: Provided further, That with reference to the San Juan-Chama project, it shall be limited to a single off stream dam and reservoir on a tributary of the Chama River to be used solely for the control and regulation of water imported from the San Juan River, that no power facilities shall be established, installed, or operated along the diversion or on the reservoir or dam, and such dam and reservoir shall at all times be operated by the Bureau of Reclamation of the Department of the Interior in strict compliance with the Rio Grande Compact as administered by the Rio Grande Compact Commission.

[11] ~~SEC. 2. In order to achieve such comprehensive development as will assure the consumptive use in the States of the Upper Colorado River Basin of waters of the Colorado River system the use of which is apportioned to the Upper Colorado River Basin by the Colorado River Compact and to each State thereof by the Upper Colorado River Basin Compact, it is the intent of the Congress in the future to authorize the construction, operation, and maintenance of further units of the Colorado River storage project, of additional phases of participating projects authorized in this Act, and of new participating projects as additional information becomes available and additional needs are indicated. It is hereby declared to be the purpose of the Congress to authorize as participating projects only projects (including units or phases thereof)—~~

~~(1) for the use, in one or more of the States designated in article III of the Upper Colorado River Basin Compact, of waters of the Upper Colorado River system the consumptive use of which is apportioned to those States by that article; and~~

~~(2) for which pertinent data sufficient to determine their probable engineering and economic justification and feasibility shall be available. It is likewise declared to be the policy of the Congress that the costs of any participating project authorized in the future shall be amortized from its own revenues to the fullest extent consistent with the provisions of this Act and Federal reclamation law.~~

[12] *SEC. 2. It is not the intention of Congress, in authorizing only those projects designated in section 1 of this Act, to limit, restrict, or otherwise interfere with such comprehensive developments as will provide for the consumptive use by States of the Upper Colorado River Basin of waters, the use of which is apportioned to the Upper Colorado River Basin by the Colorado River Compact and to each State thereof by the Upper Colorado River Basin Compact, nor to preclude consideration and authorization by the Congress of additional projects under the allocations in the compacts as additional needs are indicated.*

SEC. 3. Except as otherwise provided in this Act, in constructing, operating, and maintaining the units of the Colorado River storage project and the participating projects listed in section 1 of this Act, the Secretary shall be governed by the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto): *Provided,* That (a) **[13]** ~~irrigation repayment~~ contracts shall be entered into which, except as otherwise provided for the Paonia and Eden projects, provide for repayment of the **[14]** *irrigation* obligation assumed thereunder with respect to any project contract unit over a period of not more than fifty years exclusive of any development period authorized by law; (b) prior to construction of irrigation distribution facilities, repayment contracts shall be made with an "organization" as defined in paragraph 2 (g) of the Reclamation Project Act of 1939 (53 Stat. 1187) which has the capacity to levy assessments upon all taxable real property located within its boundaries to assist in making repayments, except where a substantial proportion of the lands to be served are owned by the United States; (c) contracts relating to municipal water supply may be made without regard to the limitations of the last sentence of section 9 (c) of the Reclamation Project Act of 1939; and (d), as to Indian lands within, under or served by any participating project, payment of construction costs within the capability of the land to repay shall be subject to the Act of July 1, 1932 (47 Stat. 564). All units and participating projects shall be subject to the apportionments of the use of water between the Upper and Lower Basins of the Colorado River and among the States of the Upper Basin fixed in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively, and to the terms of the treaty with the United Mexican States (Treaty Series 994).

SEC. 4. (a) There is hereby authorized a separate fund in the Treasury of the United States to be known as the Upper Colorado River Basin Fund (hereinafter

referred to as the Basin Fund), which shall remain available until expended, as hereafter provided, for carrying out provisions of this Act other than section 7.

(b) All appropriations made for the purpose of carrying out the provisions of this Act, other than section 7, shall be credited to the Basin Fund as advances from the general fund of the Treasury, **[15]** *and such funds shall be available for expenditures within the limitations of the provisions of this Act.*

(c) All revenues collected in connection with the operation of the Colorado River storage project and participating projects shall be credited to the Basin Fund, and shall be available, without further appropriation, for (1) defraying the costs of operation, maintenance, and replacements of, and emergency expenditures for, all facilities of the Colorado River storage project and participating projects, within such separate limitations as may be included in annual appropriation acts, (2) payment as required by subsection (d) of this section, (3) payment of the reimbursable construction costs of the Paonia project which are beyond the ability of the water users to repay within the period prescribed in the Act of June 25, 1947 (61 Stat. 181), said payment to be made within fifty years after completion of that portion of the project which has not been constructed as of the date of this Act, and (4) payment in connection with the irrigation features of the Eden project as specified in the Act of June 28, 1949 (63 Stat. 277): *Provided,* That revenues credited to the Basin Fund shall not be available for appropriation for construction of the units and participating projects authorized by or pursuant to this Act. **[16]** *After repayments to the United States of all money required to be repaid under this Act, such revenue shall be available for expenditures within the Upper Colorado River Basin as may hereafter be authorized by Congress.*

(d) Revenues in the Basin Fund in excess of operating needs shall be paid annually to the general fund of the Treasury to return—

(1) the costs of each unit, participating project, or any separable feature thereof which are allocated to power pursuant to section 5 of this Act, within a period not exceeding fifty years from the date of completion of such unit, participating project, or separable feature thereof;

(2) the costs of each unit, participating project, or any separable feature thereof which are allocated to municipal water supply pursuant to section 5 of this Act, within a period not exceeding fifty years from the date of completion of such unit, participating project, or separable feature thereof;

(3) interest on the unamortized balance of the investment (including interest during construction) in the power and municipal water supply features of each unit, participating project, or any separable feature thereof, at a rate determined by the Secretary of the Treasury as provided in subsection (e), and interest due shall be a first charge; and

(4) the costs of each unit, participating project, or any separable feature thereof which are allocated to irrigation pursuant to section 5 of this Act within a period not exceeding fifty years, in addition to any development period authorized by law, from the date of completion of such unit, participating project, or separable features thereof, or, in the cases of the Paonia project and of Indian lands, within a period consistent with other provisions of law applicable thereto.

(e) The interest rate applicable to each unit of the storage project and each participating project shall be determined by the Secretary of the Treasury as of the time the first advance is made for initiating construction of said unit or project. Such interest rate shall be determined by calculating the average yield to maturity on the basis of daily closing market bid quotations during the month of June next preceding the fiscal year in which said advance is made, on all interest-bearing marketable public debt obligations of the United States having a maturity date of fifteen or more years from the first day of said month, and by adjusting such average annual yield to the nearest one-eighth of 1 per centum.

(f) Business-type budgets shall be submitted to the Congress annually for all operations financed by the Basin Fund.

SEC. 5. Upon completion of each unit, participating project of separable feature thereof the Secretary shall allocate the total costs (excluding any expenditures authorized by section 7 of this Act) of constructing said unit, project or feature to power, irrigation, municipal water supply, flood control, navigation, or any other purposes authorized under reclamation law. Allocations of construction, operation and maintenance costs to authorized nonreimbursable purposes shall be nonreturnable under the provisions of this Act. On January 1 of each year the Secretary shall report to the Congress for the previous fiscal year, beginning with the fiscal year **[17]** ~~1955~~ *1956*, upon the status of the revenues from and the cost of constructing, operating, and maintaining the Colorado River storage project

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and the participating projects. The Secretary's report shall be prepared to reflect accurately the Federal investment allocated at that time to power, to irrigation, and to other purposes, the progress of return and repayment thereon, and the estimated rate of progress, year by year, in accomplishing full repayment.

SEC. 6. The hydroelectric powerplants [18] *and transmission lines* authorized by this Act to be constructed, operated, and maintained by the Secretary shall be operated in conjunction with other Federal powerplants, present and potential, so as to produce the greatest practicable amount of power and energy that can be sold at firm power and energy rates, but no exercise of the authority hereby granted shall affect or interfere with the operation of any provision of the Colorado River Compact, the Upper Colorado River Basin Compact, or the Boulder Canyon Project Act.

SEC. 7. In connection with the development of the Colorado River storage project and of the participating projects, the Secretary is authorized and directed to investigate, plan, construct, operate, and maintain (1) public recreational facilities on lands withdrawn or acquired for the development of said project or of said participating projects, to conserve the scenery, the natural, historic, and archeologic objects, and the wildlife on said lands, and to provide for public use and enjoyment of the same and of the water areas created by these projects by such means as are consistent with the primary purposes of said projects; and (2) facilities to mitigate losses of and improve conditions for the propagation of fish and wildlife. The Secretary is authorized to acquire lands and to withdraw public lands from entry or other disposition under the public land laws necessary for the construction, operation, and maintenance of the facilities herein provided [19] *for*, and to dispose of them to Federal, State, and local governmental agencies by lease, transfer, exchange, or conveyance upon such terms and conditions as will best promote their development and operation in the public interest. All costs incurred pursuant to this section shall be nonreimbursable and nonreturnable.

SEC. 8. Nothing contained in this Act shall be construed to alter, amend, repeal, construe, interpret, modify, or be in conflict with any provision of the Boulder Canyon Project Act (45 Stat. 1057), the Boulder Canyon Project Adjustment Act (54 Stat. 774), the Colorado River Compact, the Upper Colorado River Basin Compact, the Rio Grande Compact of 1938, or the Treaty With the United Mexican States (Treaty Series 994).

SEC. 9. Expenditures for the [20] ~~Cross Mountain,~~ Flaming Gorge, Glen Canyon, [21] *Juniper*, Navajo and Echo Park initial units of the Colorado River storage project may be made without regard to the soil survey and land classification requirements of the Interior Department Appropriation Act, 1954.

SEC. 10. There are hereby authorized to be appropriated such sums as may be required to carry out the purposes of this Act.

SEC. 11. The appropriate agencies of the United States are authorized to convey to the city and county of Denver, Colorado, for use as a part of its municipally owned water system, such interests in lands and water rights used or acquired by the United States solely for the generation of power and other property of the United States as shall be required in connection with the development or use of its Blue River project, upon payment by Denver for any such interest of the value thereof at the time of its acquisition by Denver, and provided that any such transfer shall be so limited as not to preclude the use of the property other than water rights for the necessary functions of the United States Government.

SEC. 12. [22] (*a*) In the operation and maintenance of all facilities, authorized by Federal law and under the jurisdiction and supervision of the Secretary of the Interior, in the basin of the Colorado River, the Secretary of the Interior is directed to comply with the applicable provisions of the Colorado River Compact, [23] *the Upper Colorado River Basin Compact*, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Treaty with the United Mexican States, in the storage and release of water from reservoirs in the Colorado River Basin. In the event of the failure of the Secretary of the Interior to so comply, any State of the Colorado River Basin may maintain an action in the Supreme Court of the United States, [24] *either on its own behalf or as parens patriae*, to enforce the provisions of this section, and consent is given to the joinder of the United States as a party in such suit or suits. No right to impound or use water for the generation of power or energy, created or established by the building, operation or use of any of the powerplants authorized by this Act, shall be deemed to have priority over or otherwise operate to preclude or impair any use, regardless of the date of origin of such use, of the waters of the Colorado River [25] ~~and its tributaries~~ *System* for domestic or agricultural purposes [26] ~~within any of the States of the Upper Colorado River Basin.~~

[27] (b) *In the operation of works under his jurisdiction for the storage and release of waters of the Colorado River system and in programing the storage and release of such waters, the Secretary of the Interior shall consult from time to time with an advisory committee consisting of one representative appointed by each of the Colorado River Basin States, one representative of the Colorado River Board of California, one representative of the Upper Colorado River Commission, and one representative of the United States Section of the International Boundary Commission, United States and Mexico.*

SEC. 13 As used in this Act—

The terms "Colorado River Basin", "Colorado River Compact", "Colorado River System", "Lee Ferry", "States of the Upper Division", "Upper Basin", and "domestic use" shall have the meaning ascribed to them in article II of the Upper Colorado River Basin Compact;

The term "States of the Upper Colorado River Basin" shall mean the States of Arizona, Colorado, New Mexico, Utah, and Wyoming;

The term "Upper Colorado River Basin" shall have the same meaning as the term "Upper Basin";

The term "Upper Colorado River Basin Compact" shall mean that certain compact executed on October 11, 1948, by commissioners representing the States of Arizona, Colorado, New Mexico, Utah, and Wyoming, and consented to by the Congress of the United States of America by Act of April 6, 1949 (63 Stat. 31);

The term "Rio Grande Compact" shall mean that certain compact executed on March 18, 1938, by commissioners representing the States of Colorado, New Mexico, and Texas and consented to by the Congress of the United States of America by Act of May 31, 1939 (53 Stat. 785); and

The term "treaty with the United Mexican States" shall mean that certain treaty between the United States of America and the United Mexican States signed at Washington, District of Columbia, February 3, 1944, relating to the utilization of the waters of the Colorado River and other rivers, as amended and supplemented by the protocol dated November 14, 1944, and the understandings recited in the Senate resolution of April 18, 1945, advising and consenting to ratification thereof.

12. EXPLANATION OF AMENDMENTS

[1] Strike out "making it possible for the States of the Upper Basin to utilize", and insert in lieu thereof *commencing a program for utilization in the States of the Upper Basin,* .

[1] Clarifying amendment. This substitution of language is to make it clear that this is the commencement of a program for utilization of Colorado River waters in the States of the Upper Basin, and does not in any way bar the States of the Upper Basin from subsequent utilization of additional waters through other projects.

[2] and [3] Strike out "Cross Mountain", and insert in alphabetical order *Juniper.*

[2] and [3] Gov. Edwin C. Johnson, of Colorado, in his testimony before the Committee, advised there would be serious flooding of irrigated areas if the Cross Mountain Dam were to be built. It was his opinion that the Juniper Dam, although a smaller project, would be more desirable and could be supplemented by other dams on the Yampa River.

[4] After the words "sea level" insert *and approved by the Colorado Water Conservation Board,* .

[4] Inasmuch as the Colorado Water Conservation Board is the official water agency of the State, this amendment was recommended.

[5] After the word "thereof," insert *and of the Juniper unit,* .

[5] A detailed feasibility report has not yet been completed by the Interior Department on this unit. The above amendment requires the Secretary to certify to the Congress that the project meets

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feasibility requirements from engineering and economic standpoints before its construction can be started.

[6] and [7] Strike out "such" and insert *each*.

[6] and [7] Perfecting amendment necessary by the addition of the Juniper unit.

[8] After the word "Navajo" insert *Parshall, Troublesome, Rabbit Ear, Eagle Divide, Woody Creek, West Divide, Bluestone, Battlement Mesa, Tomichi Creek, East River, Ohio Creek, Fruitland Mesa, Bostwick Park, Grand Mesa, Dallas Creek, Savery-Pot Hook, Dolores, Fruit Growers Extension, and Sublette.*

[8] These participating projects as listed are in the form recommended by the Upper Colorado River Commission and agreed to by all the States participating as members of the commission.

[9] Strike out "(a)".

[9] Perfecting amendment.

[10] Beginning with the word "Section" in line 14, page 4, strike out all of lines 15 to 24, inclusive, and the words "approved and authorized by the Congress" in line 1, page 5, and insert in lieu thereof the following:

Except as hereinafter provided, section 1 (c) of the Flood Control Act of 1944 shall not be applicable to such supplemental reports: Provided further, That with respect to the San Juan-Chama, Navajo, Parshall, Troublesome, Rabbit Ear, Eagle Divide, Woody Creek, West Divide, Bluestone, Battlement Mesa, Tomichi Creek, East River, Ohio Creek, Fruitland Mesa, Bostwick Park, Grand Mesa, Dallas Creek, Savery-Pot Hook, Dolores, Fruit Growers Extension, and Sublette participating projects no appropriation for or construction of such participating projects shall be made or begun until coordinated reports thereon shall have been submitted to the affected States (which in the case of the San Juan-Chama and Navajo participating projects shall include the State of Texas), pursuant to the Act of December 22, 1944, and such participating projects shall have been approved and authorized by Act of Congress:

[10] The language was stricken because of the inclusion of the additional projects listed in amendment No. 8. At the top of page 5 the new language inserted beginning on line 1 reads as follows:

Except as hereinafter provided, section 1 (c) of the Flood Control Act of 1944 shall not be applicable to such supplemental reports:

That part of the new language refers to the requirements of the O'Mahoney-Millikin amendment of the Flood Control Act of 1944, which requires that project plans be submitted to the States affected before submittal by the Interior Department to the Congress.

The preceding language to which this exception refers provides for supplemental reports by the Secretary evaluating the direct and indirect benefits of the participating projects named in the bill. Each of the participating projects which are named on page 3, with the exception of the additional ones listed beginning on line 4 of page 5, have already been submitted to the States in the form of project reports presenting an evaluation of benefits.

The language dealing with the requirement for supplemental reports was inserted to make doubly sure, under the circumstances involved in the upper basin, that the first evaluation of direct benefits was

accurate before Federal funds are actually expended in the construction of the projects.

The language beginning on line 4, page 5, requires that reports on those participating projects listed beginning at that point must be submitted to the States in accordance with the Flood Control Act of 1944 since no feasibility reports on the projects in this category have been reviewed by the States of the Colorado River Basin.

Beginning on line 13, page 5, there is a specific provision requiring that the reports on San Juan-Chama and Navajo participating projects be submitted to the State of Texas. This requirement recognizes the interest of the State of Texas in the waters of the Rio Grande Basin, including those exported from the Colorado River Basin into the Rio Grande Basin. Because of the interest of Texas over the years in this question, the amendment affords Texas an opportunity to review the project plans of the San Juan-Chama and Navajo which have not been submitted to any of the affected States either in the Rio Grande Basin or in the Colorado River Basin.

[11] and **[12]** Strike out all of section 2 and insert in lieu thereof the following:

SEC. 2. It is not the intention of Congress, in authorizing only those projects designated in section 1 of this Act, to limit, restrict, or otherwise interfere with such comprehensive developments as will provide for the consumptive use by States of the Upper Colorado River Basin of waters, the use of which is apportioned to the Upper Colorado River Basin by the Colorado River Compact and to each State thereof by the Upper Colorado River Basin Compact, nor to preclude consideration and authorization by the Congress of additional projects under the allocations in the compacts as additional needs are indicated.

[11] and **[12]** The new language in section 2 deals with future developments in the Upper Colorado River Basin. It sets forth that it is not the intention of the Congress, in authorizing only those projects designated in section 1 of this act, to limit, restrict, or otherwise interfere with such comprehensive developments as will provide for the consumptive use by the States of the Upper Colorado River Basin of waters, apportioned to the Upper Colorado River Basin by the Colorado River Compact of 1922, and to each State thereof by the Upper Colorado River Basin Compact of 1948, nor to preclude consideration and authorization by the Congress of additional projects within the allocation made in the Colorado River Compact of 1922 as additional needs are indicated.

[13] On page 7, line 24, after "(a)" strike out "irrigation repayment".

[14] On page 8, line 2, after the words "repayment of the", insert *irrigation*.

[13] and **[14]** Perfecting amendments.

[15] After "Treasury," insert *and such funds shall be available for expenditures within the limitations of the provisions of this Act.*

[15] Perfecting amendment to make clear intent that construction funds appropriated by Congress may be expended after crediting to the basin fund.

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[16] After "Act" insert:

After repayments to the United States of all money required to be repaid under this Act, such revenue shall be available for expenditures within the Upper Colorado River Basin as may hereafter be authorized by Congress.

[16] This amendment is to clarify the intent of Congress that net project revenues will be available for additional projects consistent with comprehensive upper basin development and within compact apportionments, after repayment of all obligations pursuant to this act, subject to future authorization by Congress. This is not an exclusive earmarking of these funds, however, and is designed only to establish conclusively that this bill is not intended to preclude future development in the upper basin from project revenues as may be authorized by Congress.

[17] Strike out "1955" and insert in lieu thereof *1956*,.

[17] Perfecting amendment.

[18] After "powerplants" insert *and transmission lines*.

[18] Perfecting amendment. Inadvertently omitted.

[19] After the word "provided" insert the word *for*.

[19] Perfecting amendment.

[20] and [21] Strike out "Cross Mountain" and insert after "Glen Canyon" the word *Juniper*,.

[20] and [21] This change was made to conform to amendments (2) and (3).

[22] After "SEC. 12." insert (*a*).

[22] Perfecting amendment.

[23] After "Colorado River Compact," insert *the Upper Colorado River Basin Compact*,.

[23] Perfecting amendment.

[24] After "United States," insert *either on its own behalf or as parens patriae*,.

[24] The words, *either on its own behalf or as parens patriae* are added to waive the sovereign immunity of the United States to actions brought by basin States in the Supreme Court of the United States under the judicial doctrine of *parens patriae* on behalf of one of their cities or other political subdivisions to enforce the requirements of section 12. The Committee recognizes that the Congress cannot restrict or enlarge the original jurisdiction of the Supreme Court under Article III of the Constitution.

[25] After "Colorado River" strike out "and its tributaries" and insert *System*.

[25] Perfecting amendment in order to conform to other necessary legislation.

[26] After the word "purposes" insert a period and strike out "within any of the States of the Upper Colorado River Basin."

[26] This was stricken to protect power generation against other uses.

[27] Insert a new subsection under Section 12 as follows:

(*b*) *In the operation of works under his jurisdiction for the storage and release of waters of the Colorado River system and in programing the storage and release of such waters, the Secretary of the Interior shall consult from time to time with an advisory committee consisting of one representa-*

tive appointed by each of the Colorado River Basin States, one representative of the Colorado River Board of California, one representative of the Upper Colorado River Commission, and one representative of the United States Section of the International Boundary Commission, United States and Mexico.

[27] Provides for appointment of an Advisory Committee representing the States concerned and for consultation with the Secretary of the Interior.

JAMES E. MURRAY, *Chairman.*
CLINTON P. ANDERSON.
RUSSELL B. LONG.
HENRY M. JACKSON.
JOSEPH C. O'MAHONEY.
W. KERR SCOTT.
ALAN BIBLE.
RICHARD L. NEUBERGER
(with reservations expressed in Separate Views).
EUGENE D. MILLIKIN.
ARTHUR V. WATKINS.
FRANK A. BARRETT.
BARRY GOLDWATER.

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II

SEPARATE VIEWS

OF

Senator Richard L. Neuberger, of Oregon, on S. 500, The Upper Colorado River Storage Project

I concur with the majority of the committee in the recommendation that the Upper Colorado project be authorized for construction by the Federal Government, but I oppose the construction of Echo Park Dam on the Green River. I hope that the Senate will delay authorization of this phase of the project until adequate consideration has been given to alternative undertakings which will produce equivalent multipurpose benefits without encroaching on the scenic grandeur of a national park or monument.

ECHO PARK DAM A THREAT TO NATIONAL PARK SYSTEM

The Echo Park Dam site is within the boundaries of Dinosaur National Monument. In my opinion, construction of this dam would constitute a serious threat to the future integrity of our great national park system. It would set a fatal precedent for other inroads on our natural recreational reserves for economic purposes. If the pressure for such encroachments is to be resisted, the task, under the present administration, falls upon the Congress to resist it.

Our national park system represents one of the most valuable natural properties which we possess. It contributes today to the physical, inspirational, and educational well-being of our people, nearly 50 million of whom visited the system last year. As our population expands, and the tensions of urban culture and industrialized civilization increase, we shall need more sanctuaries where our people can relax the tightened nerves that come with modern living. Only in our national park system and a few other areas have we preserved a remnant of the natural treasury that once covered this continent, and only here will our children be able to know America as our forefathers knew it.

The lands reserved in our national parks and monuments are dedicated to their wisest use, and their essential contributions are directly dependent on strict preservation of their natural conditions without distortion by human activity. Their benefits cannot be measured solely in dollar return, but they are the keystone of the vast tourist industry.

PROTECTION OF PARKS AND MONUMENTS IS TRADITIONAL

Ever since the National Park Service was established in 1916, Congress has consistently refused to enact legislation which would violate the protection given our national parks and monuments, in spite of constant pressures to do so. Construction of Echo Park Dam not only would set a ruinous precedent, but it would specifically

destroy the features and qualities that led to reservation from commercial use of the great canyons of the Green and Yampa Rivers.

The beauty of the Dinosaur National Monument has been left in its undisturbed natural condition. The majesty of the canyon walls, the intricate pattern of eroded cliffs, their colors and shadows, present an unparalleled example of our Nation's original tranquil wilderness. This section of the Green and Yampa Rivers has some of the most beautiful scenery in the world.

We are promised the expenditure of millions of dollars to make a more accessible recreational area of the reservoir which will fill the precipitous gorges of the Green and Yampa Rivers. Yet to those who love the silent, pristine isolation of our primitive wilderness, this is little comfort. The wisest use of Dinosaur National Monument is to preserve inviolate for the future its wild beauty, a value worthy of as much consideration as the purely utilitarian objectives of S. 500.

In spite of the mass of testimony about Echo Park Dam, no concrete evidence has been presented that Echo Park Dam is necessary. Asserted justifications for it have changed repeatedly, as one or another contention has been found to be invalid. It is difficult to understand why the sponsors of the Colorado storage project are so insistent that Echo Park Dam be built here and now, rather than defer recommendation for authorization while thorough studies are made of the possibility of revising the project to secure the desired benefits without the damage this dam would do. The House Subcommittee on Irrigation and Reclamation has requested further information from the Bureau of Reclamation about feasible alternative methods of constructing the project, and this information should be made available to the Senate before final consideration is given this legislation.

In the absence of undeniable proof that Echo Park Dam is necessary to the welfare of the Nation as a whole, this feature of the project should be deleted from the present authorization.

The question is not a choice between preserving a national monument or securing water benefits. Rather, it is how to adjust the present plans to utilize the water and secure the desired power in such a way as to reaffirm the primary values embodied by our national park system.

ECHO PARK COULD SET A PERILOUS PRECEDENT

Once the inviolability of that system is ignored in the Dinosaur Monument, it will be imperiled everywhere. Certain lumber operators hope to harvest the fir and spruce rain forests of the Olympic National Park. Irrigationists have hungrily eyed the waters of the Yellowstone. Some groups would like to construct a dam across a river within Glacier National Park.

To the values of conservation, it makes little difference whether the encroachment is by public or private enterprise. Once the traditional policies of the National Park Service are sacrificed at Echo Park, a coordinated onslaught by private interests against the boundaries of national parks and national monuments will begin all over the land.

If the reclamation service can cross the frontier of Dinosaur National Monument, why should not timber operators in the Olympics insist that a similar privilege be accorded them? What about sheep and stock ranchers eyeing the lush meadows of the Yellowstone or

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the rangelands of Grand Canyon National Park? Will there be pressure to cut the pine forests of Crater Lake National Park in Oregon? Echo Park is the test. If the beauties of Dinosaur National Monument can be sacrificed for Echo Park Dam, then other national monuments and national parks are in danger of commercial exploitation justified by reasons which will be made to sound equally compelling.

An attempt has been made by supporters of Echo Park Dam to belittle the opposition to the project by people who place the contemplation and enjoyment of unspoiled natural grandeur above values which can be measured in dollars and cents. Yet, many illustrious Americans have shared their preference, and it is wrong to minimize the extent of the popular rallying in defense of Dinosaur National Monument, which extends across the length and breadth of our country.

AMERICAN CONSERVATION GROUPS QUESTION WISDOM OF ECHO PARK

Let me refer only to the statement of policy, appearing on page 689 of the committee's hearings on S. 500, which was adopted by representatives of more than 20 conservation organizations, called into emergency meeting in November of 1954 by the National Parks Association:

1. The national park system, established by law, is urgently needed and is increasingly being enjoyed and supported by millions of people. The conservationists represent the public interest in the preservation of these areas. That is what brings us together in this crisis.

2. We are opposed to any legislation that would authorize building the proposed Echo Park Dam in the Dinosaur National Monument in northwestern Colorado and northeastern Utah—or any other dam that would flood any portion of any national park or monument.

3. We are mindful of the extreme importance of water in the West. And we are sincerely interested in any sound Upper Colorado water development that can effectively utilize the water without threatening the national park system. We point out that the necessity for Echo Park Dam has never been demonstrated. It has only been asserted. We also point out that the alternatives to Echo Park Dam have never been adequately studied by the Bureau of Reclamation, and have never been proved inferior.

4. We invite all citizens to join with us to make sure that areas set aside for preservation in the national park system are not needlessly invaded or destroyed.

(Signed) The American Museum of Natural History.
The American Nature Association.
The American Planning and Civic Association.
The Conservation Department, Yale University.
The Conservation Foundation.
The Council of Conservationists.
The Dartmouth Outdoor Club.
The Emergency Conservation Committee.
The Garden Club of America.
The General Federation of Women's Clubs.
The Izaak Walton League of America.
The National Audubon Society.
The National Conference on State Parks.
The National Council of State Garden Clubs.
The National Life Conservation Society.
The National Parks Association.
The National Wildlife Federation.
The North American Wildlife Foundation.
The Outdoor Writers Association of America.
The Sierra Club.
The Wilderness Society.
The Wildlife Management Institute.

The inundation of part of the Dinosaur National Monument by the proposed Echo Park Dam is opposed, in summary, by virtually all the organizations which traditionally have fought to protect what remains of our original scenery and outdoor grandeur. Yet I call to the attention of the Senate the constructive and openminded nature of this statement. It does not attempt to discredit the entire Upper Colorado project, opposed though these conservation groups may be to one phase of the project. It simply suggests that the project be undertaken without that single feature which would imperil national park standards.

ONLY ECHO PARK PHASE OF PROJECT IS OPPOSED

Because I share this view, I have joined the majority of the committee in voting to report S. 500 out for consideration by the Senate. Although I oppose the Echo Park phase of the project, I do not agree with those few conservation groups, such as the California Academy of Sciences, which launched an all-out attack against the entire project. I regard this as shortsighted and not within the general purview of our conservation organizations. The inclusion of Echo Park Dam does not condemn the entire Upper Colorado project. It merely means that Echo Park Dam should be eliminated because of its location within a national monument.

The present national administration has endorsed the Upper Colorado project. Many of the administration's political backers in the Congress have sought to carry out this endorsement through the enactment of the present bill.

Yet this same administration opposes the Hells Canyon project in the Pacific Northwest on the grounds that Hells Canyon would be a drain on the Federal Treasury.

In the Upper Colorado River Basin the administration proposed full Federal financing of the multipurpose projects, but in the Columbia River Basin its spokesmen advocate "partnership" with the profit-making power facilities going to the electric utility partner. The incongruities and inconsistencies in this approach to development of water resources are obvious.

UPPER COLORADO A HIGH-COST PROJECT

The energy to be developed at the sites in the Columbia River Basin such as Hells Canyon will be marketed for approximately 2.5 mills per kilowatt-hour. For this low-cost energy there is certain to be vast demand—for manufacturing, for business payrolls, for farms, for homes.

The cost of Upper Colorado power, delivered at load centers, will be approximately 6 mills per kilowatt-hour, substantially more than twice the cost of current from the Federal sites in the Columbia Basin. Demand for Upper Colorado energy, particularly for industry, will be far less than in the Pacific Northwest. Few industries would seek Upper Colorado energy at 6 mills when Columbia Basin kilowatts can be purchased for 2.5 mills. Other factors being equal, the competitive factor alone rules out the use of Upper Colorado energy for any manufactured product which could be made more cheaply elsewhere in the country.

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I am not opposing the Upper Colorado project as a government undertaking. I merely am posing what to me seems an obvious question: Is it not curious that this national administration, supposedly dedicated to financial integrity, favors the Upper Colorado project and yet, in the same breath, opposes Federal development of the power sites in the Columbia Basin which are economically far more feasible?

This administration would reserve the 6-mill waterpower locations as government projects, but it willingly abandons the 2.5-mill choice power sites to the electric utilities.

WHY "YES" ON UPPER COLORADO BUT "NO" ON THE COLUMBIA?

Is an administration responsive to the public welfare when it saves for government the marginal aspect of any resource and abandons the choice features to private corporations?

It is not my purpose to indict or embarrass the Upper Colorado project. Its $1,659 million total cost probably can be justified on the grounds that underdeveloped areas of our vast country long have needed capital improvements. The economy of the intermountain region will gain by having its agricultural economy strengthened and its energy resources increased. Echo Park is not justified, because it threatens our national park system, but I refuse to join with those who use that argument to condemn the remainder of the Upper Colorado River project.

The balance between commercial development and resource conservation must be carefully maintained in this country. Too great an emphasis in either direction can lead to serious consequences.

EX-SECRETARY OSCAR CHAPMAN WITHDREW ECHO PARK ENDORSEMENT

During preliminary discussion of the Upper Colorado project on the floor of Congress, an effort has been made to convince the public that former Secretary of the Interior Oscar L. Chapman, a prominent and leading conservationist, favored construction of a dam within the boundaries of the Dinosaur National Monument, at Echo Park.

In this connection, I call attention to a letter from ex-Secretary Chapman to the President of the United States, written on December 4, 1952, shortly before both Mr. Chapman and President Truman were succeeded in office, respectively, by Douglas McKay and Dwight D. Eisenhower.

Mr. Chapman modified previous recommendations regarding the Upper Colorado project, to bring about—

> deletion of the recommendation for immediate authorization of the Echo Park unit and the deletion of the recommendation for inclusion of the Split Mountain unit in the plan of development for later authorization.

Both Echo Park and Split Mountain would create reservoirs within the Dinosaur borders.

In this letter, Secretary Chapman made it explicit that alternative sites should be studied and decided upon. Portions of Mr. Chapman's letter of December 4, 1952, make clear his belief further study was needed. The letter said, in part:

> Attached for your consideration is my report on a proposed plan for the development and utilization of a portion of the water resources of the Upper Colorado

River Basin by construction of the Colorado River storage project and participating projects.

* * * * * * *

Proposals are made in the report for authorization of a series of dams and reservoirs in the Upper Colorado River Basin for river regulation and the generation of hydroelectric power and for authorization or reauthorization of a number of related irrigation projects. Construction of the storage project would aid the States of the Upper Colorado River Basin to achieve the benefits contemplated under the Upper Colorado River Basin Compact, to which the consent of the Congress was given by the act of April 6, 1949 (63 Stat. 31). The report also proposes the establishment of an Upper Colorado River Account. This would furnish a basis for uniform power rates and would aid in accounting for the return of the reimbursable costs of the participating irrigation projects.

This report as approved by me on January 25, 1951, as my proposed report for transmittal to the interested States and Federal agencies for comment, included a recommendation for authorization of the Echo Park unit and a proposal for the inclusion of the Split Mountain unit in the recommended plan of development for later authorization. Both of these units would encroach on the Dinosaur National Monument.

I am acutely aware of the controversy surrounding the issue between those who favor full development of the water and power resources of the Colorado River and those who oppose reservoir encroachments on the canyons of the Green and Yampa Rivers within the Dinosaur National Monument. It must be recognized that there exists no adequate measure by which the merits of the opposing views in this controversy may be gaged. Among other things, exceptionally important intangible values must be weighed against very real economic needs and potentials. The formulation of my recommendation required very careful consideration of the following points:

1. Need for a reservoir development at Echo Park versus the national value of the monument.
2. Effect of Echo Park Reservoir upon the monument.
3. Presidential order of 1938 enlarging the Dinosaur National Monument and its legal and implied interpretations.
4. Possible alternative reservoirs and their relationship to river basin development.

I have now concluded that the terms of the recommendations of the report should be modified in respect to these two units. Accordingly, the report as modified by the letter of June 29, 1951, of the Commissioner of Reclamation is further modified by the deletion of the recommendation for immediate authorization of the Echo Park unit and the deletion of the recommendation for inclusion of the Split Mountain unit in the plan of development for later authorization. In lieu of the recommendation of the Echo Park unit, I recommend that the Secretary of the Interior be authorized to construct and operate facilities, at Echo Park or at an alternate site, to serve the purposes intended to be served by the Echo Park unit. This authorization should be made subject to the requirement that the Secretary give further consideration to studies of alternate sites and subject also to a finding by the Secretary, prior to the submission of requests for appropriations to initiate construction, as to the site best adapted for development in the light of all factors involved.

* * * * * * *

As so further modified, the report as modified by the Commissioner's letter of June 29, 1951, is adopted and approved as my report.

ECHO PARK ONLY ONE OUT OF 39 SEPARATE UNITS

The Upper Colorado project consists of many individual units. The total number, in fact, is 6 storage projects, 12 participating projects, and 21 which are subject to further authorization.

Echo Park is merely one of these separate undertakings. In my opinion, it should be eliminated—certainly for the time being. If the population of the intermountain region ever is so large that needed hydroelectric power can be obtained only at Echo Park, then the time may be at hand when the scenic values of a national monument must be sacrificed to make way for an expanding civilization. Of

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course, we must always weigh the quantity of added power against the conservation values destroyed or lost.

This rule should govern all regional development, everywhere in the West. Nor should it apply exclusively to dams. Certain lumber interests, for example, would like to bring about the breaching of the national park system on the Olympic Peninsula so these mills can cut trees within the borders of the Olympic National Park in the State of Washington.

America someday may be at the stage when these trees, magnificent though they are, are imperative to national survival or to the basic comforts of America's people. If that hour is reached, then the rain forests of the Olympics may have to succumb to ax and saw. But, so long as other sources of commercial timber remain, I believe it would be little short of criminal to log and harvest one of the last remaining museums of the original coastal evergreens which once flourished in such abundance along the Pacific slope.

In essence, such a philosophy was substantiated as recently as the 83d Congress, when the Atomic Energy Act was amended to prohibit prospecting or mining of fissionable material in national parks or monuments, except when the President, by Executive order, declares that the requirements of national defense make such action necessary. Certainly if the Congress believes the boundaries of national parks must be defended from invasion even during the present search for such a vital defense product as fissionable material for atomic energy, then it cannot in good conscience endorse partial flooding of the Dinosaur National Monument for electric energy, especially when such action is not required for the defense and security of the country.

WILL THERE BE A STEADY MARKET FOR 6-MILL POWER?

Indeed, there probably is available in the Upper Colorado region a great deal more potential energy than can be used in the foreseeable future, particularly at the delivered rate of 6 mills a kilowatt-hour—a rate which precludes extensive use for competitive manufacturing. Why, then, sacrifice the most scenic parts of a national monument to build Echo Park, thus jeopardizing conservation principles which have grown up with our national park system? This is not necessary today. It may not be necessary tomorrow, or for many tomorrows.

The last projects to be undertaken for commercial development—whether by the Government or by private enterprise—should be those which imperil conservation values.

The power and storage at Echo Park are not essential to the prosperity of the intermountain West, today. Why not preserve a national monument as long as no compelling or immediate reasons dictate a different course? Urgency is not presently a prevailing factor.

I believe Echo Park Dam, inside the Dinosaur National Monument, should be eliminated from the general authorization for the Upper Colorado project until adequate consideration has been given to alternative dam sites which will produce equivalent multipurpose benefits without invading a national park or monument.

RICHARD L. NEUBERGER,
United States Senator from Oregon.

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III

MINORITY VIEWS

OF

SENATOR THOMAS H. KUCHEL, OF CALIFORNIA, ON S. 500, THE UPPER COLORADO RIVER STORAGE PROJECT

After painstaking study of the bill and close analysis of the testimony, I believe that S. 500 is an unsound measure and I am forced to recommend its rejection.

The bill, which is put forward in an earnest attempt to promote the development of natural resources of the Upper Colorado River Basin, is based on interpretations of the Colorado River Compact and related documents making up the law of the river which are, at the very least, strained. Certainly, they are challenged and contested. Furthermore, enactment at this time would be premature in view of the absence of much essential data about the cost, operation, and effect of the numerous projects embodied in an open-ended program that undeniably will require an outlay of billions of dollars from the Federal Treasury.

I cannot believe that the Senate will consider it wise action to approve legislation of such proportions which raises so many complex questions of policy, establishes precedents which radically depart from tested principles of natural resources development, and is characterized by grave uncertainty about eventual results.

The impact of this legislation on the future growth and progress of the western part of our Nation might well amount to revolutionary changes in interstate relations, nullification of solemn pacts between various units of government, destruction of the foundations of agricultural and industrial economy over a wide area, and jeopardizing of the welfare of tremendous numbers of people.

Sound and orderly utilization of all resources of the Colorado River system and basin is essential to the expanding prosperity of a vast section of our Nation. Assuredly, it would benefit the entire country. However, S. 500 is an ill-advised and hazardous way to try to reach this commendable goal.

Extended hearings before the Committee on Interior and Insular Affairs in both the 83d Congress and the 84th Congress unmistakably demonstrated that there are widely differing schools of thought about the most efficient and productive courses to bring about maximum development of natural resources of the Upper Colorado River Basin. It would be foolhardy to sidestep these differences of opinion by enacting a statute which employs a flexible yardstick for measuring economic and financial feasibility, which virtually writes a blank check on the United States Treasury, which delegates to administrative agencies authority and responsibility clearly imposed upon the Con-

gress, and which brushes aside grave issues involved in complex litigation currently pending in the highest court of this Nation.

The proposed program of development in S. 500 goes far beyond the recommendations of the President of the United States. Nevertheless, this costly and difficult undertaking is advanced with only a fragment of the extensive engineering, financial, economic, agricultural, and other data which should receive the most thorough analysis and examination before the Congress approves investment of immense sums of taxpayers' money on projects of the character envisioned.

As presented to the Senate, S. 500 contemplates an intricate network of dams, powerplants, and irrigation-reclamation works the ultimate cost of which cannot be conjectured. Specifically, the measure would authorize 6 major storage projects and 33 participating projects for the impounding, diversion, and delivery of water, and for the generation of hydroelectric power. Only the scantiest preliminary estimates are available about the cost of many of these works. The bill contains no definite limit on the amounts of public funds which may be expended for this ambitious plan. The minimum outlay admittedly would exceed $1.5 billion, while the aggregate charges for interest on the capital expenditure would be more than double this prodigious figure.

Virtually all of the objections raised in the 83d Congress against the predecessor to S. 500 apply with undiminished force. Many additional challenges have been presented in the present Congress which merit the most serious deliberation by the Senate before a decision is reached upon this proposal.

The principal arguments which I feel compelled to present to the Senate may be summarized generally in three categories. These are: legal, economic, and policy questions.

GRAVE LEGAL QUESTIONS

The proposed projects and the contemplated basis of operating them bring squarely before the Congress sharp conflicts about interpretations of the Colorado River Compact and the law of the river. Assumptions underlying the legislation would constitute encroachment upon and veritably rewrite the basic seven-State agreement negotiated in 1922 to make possible development of this great stream, its tributaries, and the vast, varied territory embraced in its watershed.

Pending before the Supreme Court of the United States is the case of *Arizona* v. *California* (No. 10 Original, October Term 1953) which presents no less than eight fundamental and sharply contested issues which cannot be ignored in the consideration of any legislation dealing with further development of the Colorado River system.

In the 83d Congress, attention was drawn to the direct implications of this lawsuit. Recently, the Supreme Court has referred to its special master the question of whether to include the States of the Upper Basin as essential and affected parties. It is impossible to forecast the effect this litigation may have on the rights of those States. The final decisions which will be forthcoming in the case may well exercise a profound influence on plans for additional works and compel fundamental changes in suggested undertakings designed to benefit New Mexico, Colorado, Utah, and Wyoming.

All parties concerned about Upper Basin development concur that the practicality and feasibility of the Colorado River storage project turn directly upon the availability of water in the system to generate the hydroelectric power contemplated and to supply the agricultural and domestic needs which would be served by the projects to be authorized.

A vital question presented in *Arizona* v. *California* is the method of measurement of consumptive use. Availability and use of water are interwoven questions which cannot be separated.

The controversy over this point has gained steadily in importance with mounting indications the Colorado River system in actuality contains only about three-quarters of the volume of water that framers of the seven-State compact believed it contained and could be employed and enjoyed. The intention and meaning of several related portions of the compact dealing with diversion, distribution, and utilization of water are the heart of the litigation now before the Supreme Court.

In view of decided differences of thought about measurement of "beneficial consumptive use," grave and far-reaching uncertainty now exists about the effect of almost all of article III of the compact. This article is the very foundation upon which rest all present and proposed works to realize the potential benefits of the entire Colorado River system.

These doubts embrace language of the compact which (1) apportioned in perpetuity the right to utilize 7.5 million acre-feet per annum in each basin; (2) which permitted use of 1 million acre-feet annually of so-called surplus water in the lower basin; (3) which specified the manner of providing water for Mexico now required by the Mexican Water Treaty ratified over the stern protests of California 10 years ago; (4) which is a promise by Upper Basin States they will not diminish the flow at Lee Ferry below an aggregate of 75 million acre-feet in any 10-year period; and (5) which stipulates the Upper Division will not withhold and the Lower Division will not compel delivery of water which could not reasonably be put to domestic and agricultural use.

The significance of the dispute about interpretations of various features of article III has been demonstrated by doubts expressed about the meaning and obligations of the compact by a respected former colleague, Gov. Edwin C. Johnson, of Colorado. While eager to obtain congressional approval for ambitious plans for development of the Upper Basin, Governor Johnson candidly testified before the committee that he is gravely apprehensive concerning provisions of article III (d) and III (e) relating to the guaranteed flow to the Lower Basin and possible withholding by the Upper Basin.

Former Senator Johnson last December publicly asked a series of questions stemming from his uncertainty about the intent and effect of specific provisions of the compact. During his appearance before the committee more than 2 months later, he still was not satisfied the Upper Colorado Basin States could withhold the water which is proposed in this bill.

I call attention to page 237 of the transcript of committee hearings, where the following discussion is reported:

Senator KUCHEL. Yes; I was quoting the Governor's words there in that last paragraph.

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Then on page 12, Governor, again your own language:

"I am compelled to keep emphasizing that whatever water is stored in the Glen Canyon and Echo Park Reservoirs will be surplus to the agricultural and domestic needs of the Upper Basin and must be delivered to the Lower Basin to satisfy the award of 1.5 million acre-feet to Mexico and 1 million acre-feet to the Lower Basin.

"Furthermore, should the Lower Basin require an additional supply of water for agricultural and domestic purposes the water stored in these reservoirs must be released."

On the basis of that comment, Governor, I first ask if those views of yours are the same today as when you gave them to the press in December of last year.

Governor JOHNSON. Those views are all in the nature of a question and I have had not the answer to that question. So the question is still bothering me.

This whole document is in the nature of a question and I am anxious to know the answer. I understand that the members of this committee do not feel that the questions have the merit which I gave them, but, nevertheless, I am still seeking answers to this whole document.

In the event the final decision of the Supreme Court in *Arizona* v. *California* sustains interpretations of the compact as are contended by California, the fears voiced by Governor Johnson will have been justified. A ruling in consonance with California's position will mean that availability of water for two key features of the project—Glen Canyon and Echo Park Dams—will be reduced to the point where the entire basis for the Upper Basin storage project will have been eliminated.

Another feature of the compact is involved in the pending lawsuit in a fashion which throws further doubt on the availability of water to generate the power to provide revenues to make the entire project feasible and to supply the more than 1.1 million acres intended to be furnished with new or supplemental quantities. The Supreme Court has been asked to rule on the meaning and effect of article VII which relates to rights of Indian tribes in the basin.

In the pending controversy, the Department of Justice has made claims which seem to involve over 1.7 million acre-feet of water of the system and seriously reduce the allocations of 7.5 million acre-feet to each basin. During the 1954 hearings, Judge Jean S. Breitenstein, who for years was attorney for the Colorado Water Conservation Board, acknowledged the ultimate scope of the question about Indian rights is itself disputed. Judge Breitenstein conceded that if the Supreme Court upholds a theory that Indian claims constitute a first demand upon the water—

then every right to the use of water of the Colorado River and its tributaries is of doubtful validity.

The committee was unable to obtain a clear statement of the attitude which the United States takes in regard to quantities of water to which the Indian tribes may eventually be entitled. Officials of the Department of the Interior, while maintaining the Indian rights issue is immaterial to S. 500, could not state what priorities are claimed on behalf of the tribes resident in the basin. The question is, at the very least, confused and clouded since the compact declares nothing in the way of allocations to individual States shall impair obligations of the United States to Indian tribes.

In the present situation, the Department of Justice asserts superior rights for Indian tribes, yet the Department of the Interior cannot testify concerning the amounts of water which are involved. Apparently the issue is so debatable there is difference of opinion within

the Interior Department and reluctance on the part of that agency to agree with the Justice Department contention.

The broad question of measurement of water has an undeniable impact on the distant future welfare of the entire Lower Basin, just as it does on possible development of the Upper Basin. The aggregate capacity of the storage reservoirs proposed in S. 500 is more than 40 million acre-feet. The average flow of the stream at Lee Ferry, according to studies over 40 years, is 15.4 million acre-feet annually. On this basis, in the opinion of experts, an estimated 20 years would be required to fill the reservoirs and make possible the generation of the hydroelectric power which is essential to provide revenues by which the entire project would be feasible. If the Supreme Court finds the water may not be withheld, the financial foundation of the whole project crumbles.

My colleagues of the majority of the committee are disposed to minimize the relationship between *Arizona* v. *California* and this legislation. They contend that the issues involved in the litigation are inconsequential except as they will determine disposition of Lower Basin problems. I cannot agree.

The whole concept of the Upper Colorado River storage project is based on interpretations of the law of the river by proponents of the legislation and by the Department of the Interior which would administer it. I submit that operation of the Upper Basin development plan would be directly influenced by findings of the Supreme Court on such points as the meaning of "per annum" in article III (a) relative to apportionment of water between the two basins, the extent of "rights which may now exist," the availability of III (b) water in the Lower Basin, the means of carrying the Mexican treaty burden, the status of Indian claims, and the respective rights of Upper and Lower Basins to withhold or require delivery of water.

Prudence and conscientiousness seemingly would dictate the obtaining of final answers to the many far-reaching questions before the United States proceeds to expend upwards of $1.5 billion and assume a burden that eventually could reach $4 billion for a network of projects whose feasibility is so largely contingent upon revenues from key powerplants. Only after the questions in the suit are settled, and not while they remain unanswered, would enactment of a measure authorizing future expensive works on the Colorado River be warranted and sensible procedure.

SERIOUS FISCAL PROBLEMS

The financial and economic problems involved in this legislation are equally important and complex.

This program is described as in accord with recommendations of the President. However, in its present form, S. 500 goes far beyond the program submitted to the Congress by the Department of the Interior which President Eisenhower termed "well-conceived."

The development plan as outlined by the administration consisted of 2 major storage dams—Echo Park and Glen Canyon—and 11 new participating irrigation and reclamation projects. The Interior Department did not recommend the bill before us, has reservations about the benefits and feasibility of certain of the works sought to be undertaken, and can supply only rough estimates of cost and repayment in

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reports on reconnaissance investigations into 15 of the participating projects enumerated in S. 500 as it emerged from our committee.

The Department proposed the construction of works which would create reservoirs with storage capacity of 32,460,000 acre-feet, costing $597,696,000, together with 11 new participating projects, costing $304,356,000, to provide new and supplemental water supplies for 366,290 acres.

The works proposed by S. 500 comprise 6 storage dams, capable of storing 40,390,000 acre-feet of water and costing $821,886,000 plus 33 participating projects, calling for an investment of $874,281,800 to supply 1,208,645 acres with new and supplemental water.

Thus, the development envisioned by S. 500 would require expenditures nearly twice the total deemed feasible by the Interior Department, impounding more than 21 percent more water, and supplying over three times as many acres of land.

The ultimate aggregate cost of this legislation cannot be even guessed, inasmuch as only preliminary and partial studies have been made of 17 of the 33 participating projects. The interest charge which eventually will be paid by the Nation's taxpayers obviously will amount to several billions of dollars, since the Interior Department has advised the comparable burden imposed by those works it originally recommended will amount to a total of $1,153 million in the year 2032.

The fundamental economics of the entire program are subject to challenge and depart from precedent. Although this venture would be built under the reclamation laws, its success from a financial viewpoint will be determined by the sale of power proposed to be produced at the six main reservoirs.

Of the aggregate $1,696,147,800 construction cost of the 33 participating projects and 6 storage dams, the agricultural water users would repay only $108,212,200, according to Reclamation Bureau estimates. The taxpayers' prospects of getting back investment costs rest on the soundness of predictions about the market for power and the willingness of consumers to pay prices for hydroelectricity which are substantially above the level established at comparable other developments constructed by the Interior Department.

The statistics furnished the committee by the Bureau of Reclamation show the estimated income over the payout period from sales of power from the six major storage works would be $909,152,300. The revenue is based on an assumption of a ready market for energy at the high price of 6 mills per kilowatt-hour. As indicated in the portion of this report dealing with legal issues, the availability of water to generate this electricity is by no means certain.

The idea of justifying such an ambitious undertaking by forecasting prospective power revenues is in itself extraordinary in view of the conditions surrounding this program. In the case of the first venture on the Colorado River, Hoover Dam, firm contracts for power sales were consummated in advance of construction. In the instant case, the extent of the market in many areas has been merely estimated in reconnaissance studies while the population is widely distributed with an average density of only 3 persons per square mile compared to the national average of approximately 51. The committee received only general assurances that, subject to conditions which have not been

worked out, private utilities stand ready to purchase "large blocks" of energy.

To illustrate the premature nature of this bill, the committee was unable to get any estimate of revenues from the proposed Juniper Dam and powerplant, although engineering plans call for generating and transmission features costing $5,834,000. Initial energy output was estimated at 125 million kilowatt-hours.

The basis on which the Congress and the Federal Government have undertaken a variety of public works in the past has included consideration of what is known as a cost-benefit ratio. In one form or another, such a figure is applied against proposed river and harbor improvements, flood prevention works, and all irrigation-reclamation developments. This program embraces a number of projects with widely varying cost-benefit ratios.

Disregarding the actual value of lands to be served and such questions as the type of crops to be raised, the evidence before the committee about the project costs is such that Congress should weigh carefully the lengths to which the United States goes in underwriting such developments.

Let me make this clear. I do not condemn so-called high-cost projects per se and I acknowledge that this Nation has virtually constructed all of the low-cost developments which appear feasible.

Nevertheless, I am disturbed at the variations from $210 to $749 per acre for construction costs of the initial projects and from $77 to $1,530 per acre for the participating projects added by the committee. As I have noted in other connections, the estimates for many of these latter projects are extremely preliminary, coming from what are termed by the Reclamation Bureau "reconnaissance reports."

Besides relying on power revenues to substantiate arguments that the entire development is "feasible," proponents of S. 500 have endorsed a remarkable and novel repayment plan. The reimbursements would be greatly delayed, with much of the repayment not scheduled to begin until 50 years after completion of construction. A substantial amount of the outlay is assigned arbitrarily to irrigation features, thus reducing the interest charge against the program and transferring an additional load to all of the Nation's taxpayers.

The allocation of construction costs to irrigation is exceedingly difficult to accept in the case of the main storage dams. Little water for agricultural use would be withdrawn from the reservoirs behind these structures, yet a high percentage of the investment would be charged against irrigation and reclamation. This is especially true in the case of the two biggest units, Echo Park and Glen Canyon. The Reclamation Bureau assigns $48,043,000 of $176,426,000 and $50,296,000 of $421,270,000, respectively, to irrigation and reclamation, but not a dollar of repayment of the costs would be received from water users.

Another reason for the utmost caution is the possible effect of Upper Basin development on the financial structure of Lower Basin developments. Revenues from Hoover Dam would be jeopardized if, because of dry cycles or other factors, water should not be available for the downstream powerplant. The committee, in other hearings on a related matter concerning the Colorado River, recently was advised that the hydroelectric output in the Lower Basin had been curtailed because of inadequate water.

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The optimism of proponents of the Upper Basin program was questioned by an expert consultant for one of the States which expects to benefit. Raymond A. Hill, consulting engineer retained by Colorado, declared that even if the Upper Colorado River storage project, on the modest scale proposed by the Interior Department, had been built a quarter-century ago and put in operation as soon as the seven-State compact was consummated—

there would not have been enough water since then for the beneficial consumptive uses in the Upper Basin permitted by that compact.

CONSIDERATIONS OF POLICY

The foregoing discussion implies some of the broad policy matters that are inherent in legislation of the sort of S. 500. I believe that it is unwise to make decisions on fundamental principles in piecemeal fashion. Some aspects of those questions are being studied and weighed by the Commission on Organization of the Executive Branch of the Government which Congress specifically created to ponder issues of the type here presented.

The bill seeks to bypass certain obligations presently recognized by both Congress and the executive branch of the Government. By implication, Congress would commit itself as far as is legally possible to a long-range plan of comprehensive developments in the Upper Colorado River Basin.

The thoroughness of essential engineering investigations is open to question. Apprehension exists about the geological characteristics of the site chosen for Glen Canyon Dam while a possibility exists that Rainbow Natural Bridge would be impaired. The rock in the Glen Canyon area, the Reclamation Bureau admits, is "poor" compared with the strata underlying other big structures.

Extra steps to insure safety and efficiency of the Glen Canyon unit will increase the cost but there is no assurance that seepage will not result in water losses that will upset all operating plans. The Bureau intends, even while recommending this structure, "to carry out further experiments, to see if we could not solidify that foundation a little more by chemical grouting." Protection of Rainbow Natural Bridge by a dike is contemplated, yet backing up water behind Glen Canyon concededly will make access to this scenic rarity "more difficult." Indeed, there is question whether Glen Canyon should be erected at all on the site selected.

Evaporation losses behind the major dams will be substantial and an undeniable drain on a river system already threatened with excessive burdens. In order to generate the power required to finance the project, reservoirs will be created from which 1,065,000 acre-feet annually will be lost forever through evaporation. Certainly Congress should face squarely the question whether it is desirable to accept each year an irrecoverable loss equivalent to two-thirds of the quantity of water the United States has guaranteed to deliver to Mexico. Incidentally, the manner in which the Interior Department, even during the course of hearings in 1954, modified estimates of evaporation losses and revised computations is reason for honest question as to whether they may be the sound and final answers.

A major policy problem inherent in this legislation has been foreshadowed in the section of this report dealing with some economic

aspects. In passing on this proposal, Congress should consider whether it wishes to adopt a rubber yardstick for evaluating such developments. This point becomes important since one of the participating units will not result in a single dollar of repayment by water users and the investment ranges so greatly, from $77 to $1,530, on the basis of areas benefited.

An unusual delegation of authority would result from enactment of this bill. In the case of at least 12 of the participating projects, Congress is asked to accept without further review results of reexaminations and reappraisals by the Interior Department. A return of this kind to the blank-check procedure which encumbered the Federal Government and short-circuited Congress in past years is deplorable.

Inadequate study has been given, as was noted last year, to the possible effect of water diversions out of the Upper Basin on the quality of water remaining for downstream users. Undeniably exportation of water at higher elevations, where purity is greatest, will impair the quality in lower reaches. There is about 1 ton of salts in each acre-foot of water now coming to the Lower Basin. The effect of the impounding and diversion through works proposed in S. 500 certainly merits more investigation than has been carried out to date.

Conflicting interests in national resources have been cited in connection with this contemplated development. Sincere protests have been registered about the effect of Echo Park Dam on the Dinosaur National Monument and uneasiness shown about the consequences of Glen Canyon Dam to Rainbow Natural Bridge. Surely the historic policy of preserving scenic and historical wonders should not be altered without earnest deliberation.

CONCLUSION

The measure as reported in some regards is a definite improvement over the original proposals for development of the Upper Basin but the willingness of the committee to add projects which have not been thoroughly examined and investigated is cause for alarm.

I cannot concur, however, in the judgment of the majority that the time has come to authorize expenditures of such proportions and establish precedents of such far-reaching consequences, especially when the intended safeguards leave much to chance and the ostensible disclaimer of intent to construe the law of the river is in effect contradicted by testimony concerning the plan of operation of this project.

For the reasons recited in this report, I believe that S. 500 should not be passed.

THOMAS H. KUCHEL,
United States Senator from California.

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84TH CONGRESS
1st Session

SENATE

REPORT
No. 129

ANNUAL REPORT

OF THE

SELECT COMMITTEE ON SMALL BUSINESS

UNITED STATES SENATE

MARCH 30 (legislative day, MARCH 10, 1955.—Ordered to be printed, with illustrations

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LETTER OF TRANSMITTAL

UNITED STATES SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
March 30, 1955.

Hon. RICHARD M. NIXON,
President of the Senate,
United States Senate, Washington, D. C.

DEAR MR. PRESIDENT: I have the honor to transmit to you the fifth annual report of the Select Committee on Small Business. This report reviews the work of the committee during the second session of the 83d Congress and also outlines current problems facing American small business.

Since Senator James O. Eastland and Senator Wayne Morse were not members of the committee during 1954, they have taken no part in the preparation of this report. With these exceptions, the report has the unanimous support of the committee.

JOHN SPARKMAN,
Chairman, Select Committee on Small Business.

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84TH CONGRESS } SENATE { REPORT
1st Session } { No. 129

ANNUAL REPORT OF THE SELECT COMMITTEE ON SMALL BUSINESS

MARCH 30 (legislative day, MARCH 10, 1955.—Ordered to be printed, with illustrations

Mr. SPARKMAN, from the Select Committee on Small Business, submitted the following

ANNUAL REPORT

INTRODUCTION

A searching appraisal of the position of small business within our economy during 1954 does not provide a basis for viewing the future of small, independent enterprises with complacence. In a sense, 1954 was a "normal" year. No war galvanized the industrial community. No depression swept large numbers of small enterprises out of existence. Indeed, the somewhat slower tempo of business activity which became apparent in 1953 and carried over into the first quarters of 1954, quickened perceptibly during the closing months of 1954. It may be assumed that a well-founded spirit of optimism about the immediate business outlook was responsible for the 11,981 business incorporations in December, the highest monthly total since January of 1947, and for the full-year total of 117,164 incorporations which exceeded those of each year since 1947. On the other hand, 10,300 fewer businesses of all types started in the first 6 months of 1954, compared with the same period of 1953, and Dun & Bradstreet recorded 2,224 more failures involving court proceedings or voluntary action likely to end in loss to creditors in 1954 than in 1953.

Your committee realizes, however, that it is easy for selective indices to mislead those who hold that what seems good for the economy as a whole must of necessity also be good for small business. The fate of small, independent businesses is not chained by natural law to the more narrowly fluctuating fortunes of the larger and hardier units within the industrial complex. Countertrends are not only possible, but clearly discernible.

To a businessman, the proof of the pudding must be in the profits. And it is precisely in the profit position of smaller manufacturing enterprises that your committee detects one of the basic aspects of the current small-business situation which is most disturbing.

Whether measured by percentage of stockholders' equity or by percentage of dollars of sales, the profits of smaller manufacturing corporations, after taxes, have shrunk since 1952, while, with few exceptions, the profits of the largest corporations have increased.

For example, as a percentage of stockholders' equity, the profits of the smallest manufacturing size group, companies with total assets under $250,000, stood at an annual rate of 10.6 percent after taxes for the first 6 months of 1952. During that period there was only a slight spread between the smallest size group and the largest group, having assets in excess of $100 million. The profit rate for this largest group, as a percentage of stockholders' equity, was 11.3 percent after taxes. By mid-1954, however, no such affinity of profit between small and large was evident. In fact, a forbidding disparity appeared. For the first half of 1954, profits for the smallest size companies dwindled to 4.1 percent for a shrinkage amounting to 61.4 percent. No such blow befell the largest group of corporations. Instead of declining during the first 6 months of 1954, the profit rate for the giant corporations actually increased from the 11.3 percent of 1952 to 12 percent, a 6.1 percent rise.

Profits as a percentage of dollar sales present a similar picture for the first 6 months of 1952, compared with the first half of 1954. On this basis, the smallest group's money-making ability declined 60.9 percent, while the biggest corporations showed an increase of 10.5 percent. In addition, the small manufacturer's share of total sales has drifted downward from 19 percent in 1947 to 14 percent in 1953, a trend which, if unchecked, can easily assume alarming significance.

These and other factors strongly suggest to your committee that there are obscure, complex, and underlying forces at work within our economy that are inimical to the future of small, independent enterprise. To discover and correct these causes of the mounting disadvantages facing the small-business man should be a major concern of all who want to see preserved the vigor of our free-enterprise system.

It is the hope of your committee that to an ever-increasing extent the Small Business Administration will assume the role of bellwether among our executive agencies in what should take the shape of a concerted administrative attack on those elements of our economy which are hostile to the ease of entry of new businesses and to the growth of existing independent enterprises. Within the scope of its present field of operations, with emphasis placed on procurement, financial, and management assistance, SBA has made noteworthy progress. In the following chapter your committee states why it believes Congress should renew SBA's legislative mandate.

Your committee has long been deeply disturbed over the multiplying evidences of concentration of economic power in the managements of a relatively few huge corporations. Oligarchic control over groups of vital industries, even though such control may be exercised within the letter of the law, must inevitably exert a contracting influence on freedom of endeavor. In each of its annual reports since 1951, your committee has stressed its belief that the threat of monopoly has not lessened, not remained constant, but has, in fact, assumed more menacing proportions. It would, indeed, not be stating the case with excessive emphasis to say that your committee's uneasiness of former years has turned to grave apprehension. Scarcely

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a day passes but the newspapers carry notices of the intent or consummation of a significant merger. There are few major industries which in the past year have not witnessed some of their more prominent companies join hands in corporate wedlock. Cognizance of this state of affairs has been taken by the Department of Justice. The Chief of the Antitrust Division, Assistant Attorney General Stanley N. Barnes, stated:

> There are definitely more mergers of larger firms than usual at the present time. We are going to look into every significant merger.

The concern of your committee is not so much with the mere number of mergers and acquisitions in manufacturing and mining which have taken place in the past year. Final figures are expected to show about 600 such actions for 1954. Numerically this compares with 793 in 1953, with 822 in 1952, and with 703 in 1951. Rather, the concern of the committee derives from the type of the companies which are currently amalgamating. Many relatively large and well-managed firms are joining forces with companies of comparable size, prominence, and managerial competence. A common reason for this type of merger is to combat more successfully the crushing competitive pressures exerted by the handful of giant companies which control the industry. The recent mergers of the smaller "independent" automobile companies exemplify this quest for survival through merger. Your committee's sympathetic interest will follow the fortunes of the smaller automobile companies in what has been termed their year of decision.

Another type of merger is being caused by the desire of large and successful corporations not to place all their eggs in one basket. Diversification has become an industrial fetish. To insure profits and as a hedge against a slump in their own industry, many corporations have purchased thriving concerns whose products or services bear little or no relationship to those of the acquiring company. Such a merger may or may not affect competition in the field of the acquired company. It is certain, however, that overnight the acquired firm shares in the resources, prestige, and the all-important personal connections of its new parent concern. It is also a certainty in such cases that a subtraction of one independent business unit must be made from the business-statistics column headed "Small independent businesses."

Examples abound of industries, formerly composed in the main by many small units, in which these selfsame small firms today are fighting a hopelessly losing battle against a few large competitors. The brewing industry provides a random and typical instance. If present trends in this business continue, the probability is that within the next 10 years 70 percent of total beer production will be controlled by the 10 largest breweries. Banking and industry sources have stated that in the fall of 1954 approximately 200 small brewing companies were for sale.

Your committee has found some encouragement in the interest shown the problem of industrial concentration by both the Federal Trade Commission and the Antitrust Division of the Department of Justice. In October 1954, Edward F. Howrey, Chairman of FTC, ordered the Commission's Bureau of Economics to conduct "a speedy but thorough investigation of the current wave of mergers." It was

indicated that the study would not be confined to manufacturing, but would embrace all corporate merger activities. Similarly, the report of the Attorney General's Committee To Study the Antitrust Laws is awaited with great interest.

Both of these studies should cast some light where much light is needed. One of the greatest handicaps confronting those who would help small business has been the inadequacy of data about small business. Your committee has long felt that too large a segment of small business sifts through the Government's statistical sieve and escapes observation.

There can be no doubt that a speedy and sound approach to the problem of economic concentration must be made. Antitrust enforcement is one of the foremost domestic challenges facing the Government today. Every regulatory resource of the Government will have to be used to apply braking pressure on those forces promotive of monopoly. In so important an area as fair trade, your committee would like to see a more uniform approach by the Department of Justice and the Federal Trade Commission. The enforcement of section 7 of the Clayton Act, as amended, involves an admittedly difficult determination of the probable effect on competition of a merger or acquisition. Proof of damage to competition in general is much harder to demonstrate than is damage to a competitor. Indeed, competition, as such, has yet to be precisely defined. Heavy emphasis must necessarily be placed on evidence which is largely circumstantial. Criteria to measure degrees of injury to competition have not been firmly established by court decisions. Nonetheless, your committee is hopeful that with the trend toward monopoly so clearly discernible, Government agencies will exercise their collective efforts to make maximum use of those statutory and regulatory tools now at hand. Concurrently, no effort should be spared to probe the underlying factors which have set in motion what may, unless checked, prove to be a disastrously accelerated rate of economic concentration.

The small-business man trying to maintain his position as an essential contributor to the dynamics of our free-competition system must be prepared to overcome many other problems which are closely related to the smallness of his enterprise. Your committee wishes to call attention to a few such problem areas.

During the 83d Congress, your committee established on a permanent basis a subcommittee on relations of business with Government. The complexities of midcentury economic life demand that businessmen spend more time and money conforming to Federal administrative and regulatory requirements. In this field, your committee is uneasy over ample indications that small-business men, who find themselves embroiled with Federal executive agencies do not always receive equitable treatment. There is evidence to support such an assumption. In fact, in the case of some Post Office Department mail-fraud proceedings and Federal Trade Commission cease-and-desist orders, the probability exists that small-business men are frequently accorded treatment which runs counter to accepted canons of fair play.

Three such cases have been brought to the attention of the committee. In consideration of these matters, it should be stressed that your committee is in no wise concerned with whether the products involved are falsely advertised or fraudulent; it is concerned solely with the

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question of whether the small-business respondents in these actions were treated with the same consideration as would be large corporations involved in similar proceedings.

The first instance has to do with a mail-fraud proceeding instituted by the Post Office Department against a small-business man whose place of business is in St. Helens, Oreg. The original complaint, filed by the Post Office in 1946, challenged the accuracy of the small-business man's advertising. The respondent has estimated that to date the proceedings have cost him an out-of-pocket sum well in excess of $200,000. The major question involved in this case from the point of view of your committee is whether or not the Post Office has observed the requirements of the Administrative Procedure Act.

A hearing was held before a trial examiner of the Post Office Department. An appeal from the adverse initial decision was filed in respondent's behalf by his attorney.

In requesting that the decision be set aside, it became of concern to the respondent to ascertain the authorship of the decision. This was thrown into question by two factors. First, the hearing examiner who had presided at the hearings transferred to another executive agency before the decision was written. Second, although the decision was signed by the Deputy Postmaster General, the actual authorship could not reasonably be attributed to that official. When inquiry proved fruitless, the small-business man asked your committee for assistance. At the request of the committee, a meeting was held at the Post Office Department at which it was revealed that the author of the initial decision of the hearing examiner was, in fact, the trial attorney who prosecuted the case for the Post Office Department.

In admitting authorship of the decision, the trial attorney stated to a staff member of your committee that he wrote the initial decision in that case and that he had written many such decisions, some of which had been quoted by the court of appeals.

Congress intended to provide in the Administrative Procedure Act a bill of rights for American businessmen to guarantee that their basic rights would receive the same just consideration and safeguards that prevail in courts of law when such businessmen must stand trial before the Government's regulatory agencies holding quasi-judicial powers. Your committee had assumed that the purposes of the Administrative Procedure Act had been achieved.

It has, therefore, come as a shock to your committee to learn that in the conduct of mail-fraud proceedings in the Post Office Department the most elemental rights of a small-business man have been violated in that the prosecutor and judge were the same person.

Your committee believes that the problem presented here is of the gravest import and one which demands determined efforts by the Post Office Department to preclude the possibility of recurrence.

The second case involves a gasoline additive which in 1943 was marketed by the inventor without commercial success in very limited areas of New Jersey and New York City. On September 3, 1943, the Federal Trade Commission issued a complaint against the inventor. On January 23, 1945, a cease-and-desist order was issued. Public hearings were held before a hearing examiner. The Bureau of Standards ran tests. On July 6, 1945, the cease-and-desist order was vacated by the Commission. On August 19, 1947, the complaint was dismissed.

The aspect of this case which concerns your committee is that in mid-1953 an oil company, 1 of the 20 largest corporations in America, with assets in 1953 of over $1 billion, placed on the market a gasoline additive which was blended with its gasoline and nationally promoted through every advertising media available. Shortly thereafter, almost every major oil company in the Nation [1] marketed their gasoline with a blended additive. To date, your committee knows of no Federal Trade Commission complaint or cease-and-desist order which has been issued against the additive-treated gasoline of a major oil company.

FTC's unhesitating attack on the virtually unknown gasoline additive in 1943, which ensnared a small-business man in the regulatory coils of the Commission for 4 long years, is all the more inexplicable to your committee in view of the fact that there is strong disagreement among petroleum experts themselves on the value of some gasoline additives. In support of this point, your committee cites the opinions expressed during a symposium on the problem of combustion chamber deposits, held during the 51st semiannual meeting of the National Petroleum Association in Cleveland, Ohio, April 14–16, 1954.

With some of the most prominent petroleum technicians themselves holding completely divergent views on the value of gasoline additives, your committee is puzzled at the sharp contrast between the Federal Trade Commission's handling of the small additive producer and the additive activities of the major oil companies. The committee feels that the FTC might well heed the remarks of one research and development executive of a major oil company who, at the NPA symposium on additives in Cleveland, stated:

> * * * Our work has not convinced us yet that phosphorus additives give enough in the way of benefits to outweigh the disadvantages that seem to go along with them. We're not so sure that the motorist is really going to benefit. And it seems to us that it would be extremely unfortunate if the industry were to embark on an additive race, just for the sake of the advertising they could get out of it, without really conclusive evidence that the motorist is being provided with more good than harm.

The third case involves a schedule of hearings set by a Federal Trade Commission trial attorney to take testimony in a cease-and-desist proceeding against a small-business respondent whose place of business is in California. These hearings were commenced in Washington on July 26, 1954. The respondent was notified by the trial attorney on December 10, 1954, that hearings had been scheduled in 16 States and 23 cities and towns for the purpose of taking testimony from witnesses for the FTC. Specimen hearings were as follows:

> New Haven, Conn.: 1 witness. Time: 1 hour 40 minutes
> Boston, Mass.: 2 witnesses. Time: 57 minutes.
> Allentown, Pa.: 1 witness. Time: 40 minutes.

In this regard, your committee is compelled to ask these questions. Why were not these few FTC witnesses from New Haven, Boston, and Allentown heard in Washington instead of subjecting both respondent and the FTC trial attorneys and hearing examiner to the expense of such an itinerary? The committee is aware that by the terms of a Commission minute passed on February 4, 1937, it is the

[1] According to the compilation of the National Industrial Conference Board, there were 10 petroleum companies among the first 20 largest manufacturers by size of assets in 1953.

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general practice of FTC not to subpena witnesses to Washington who are located more than 100 miles from the Capital. The committee is also aware, however, that exceptions may be made to this rule upon application for same by a trial attorney to the Commissioners. It seems to your committee that the Commission might well balance more carefully the possible inconvenience to single witnesses resulting from their being asked to give testimony in Washington against the crippling financial burden it places on small-business respondents by forcing them to participate in a series of one-night stands extending in time over a period of months and in distance over half the country.

A further question, and a most important one, is: Does such action by a Government agency, through the imposition of an intolerable financial hardship, in effect deny respondent due process? This is clearly a question requiring decision by a court of law.

The small-business man again finds himself at considerable disadvantage in the vital field of patents. It would be difficult to assess the incalculable benefits our Nation derived in past years from self-employed inventors whose ingenuity produced the ideas on which thousands of small businesses were launched on successful careers. Today, research, development, and inventiveness have become largely the private domain of the laboratories of large corporations. Of the obstacles confronting the small, independent inventor, our patent system is far from the least. Mr. Lester P. Barlow, of Stamford, Conn., an independent inventor of repute, characterizes our present patent system as follows:

> These days, to get a good patent on a valuable invention requires spending several thousand dollars and months—sometimes years—of time. Where is the average private inventor going to get money like that? He isn't, obviously. So he has to go to work for large industries, and the rugged individualism that produced so many of America's wonderful inventions is throttled.

Your committee has noted with interest and approval a report to the Secretary of Commerce by the Advisory Committee on Application of Machines to Patent Office Operations which was submitted on December 22, 1954. Dr. Vannevar Bush, president of the Carnegie Institution of Washington, was chairman of the Committee. The report stated in part:

> The patent system plays a major part in the creation of new products and processes. These appear every year and stimulate the establishment of new companies to produce them. However, the individual inventor or small-business man is severely handicapped if he must wait several years for his patent to issue or if he must operate for a period of years in uncertainty as to the possible appearance of a conflicting patent. If valid patents cannot be obtained with reasonable dispatch, inventors are discouraged and small businesses are without the modest protection which enables them to enter the field in competition with the larger, well-established firms. Yet it is the efforts of inventors and the continuous advent of small firms that keeps our economy flexible and free of stagnation.

As a Nation we have been understandably inclined to take more or less for granted an economic system and its benefits which to citizens of other countries have been a constant source of wonder and envy. Foreign observers on our shores always quickly discover the "secret" of our strength and progress as being what one distinguished Swiss economist recently termed a "free market without equal on the face

of the globe."[2] The key word in this appraisal is, of course, "free."

It is not arguable that the more than 4 million small-business units out of a total business population of some 4,200,000 units form the basis of our progressive economy. That they perform this foundational function is owing entirely to freedom of competition. It follows that any force which unnaturally restricts freedom of competition is bad and any action, idea, or force which promotes and encourages free competition is good. In this report, your committee has indicated some of the problem areas of small business. Such problems, as well as any others which may become apparent in the near future, will receive the close attention of your committee so that the small-business men of America may be helped to share in the era of continuing prosperity which lies ahead.

[2] Prof. William E. Rappard: What Is the Cause of the Economic Superiority of the United States? (Libraire De Medicis, Paris.)

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CHAPTER I

SMALL BUSINESS ADMINISTRATION

Section A. Introduction

In its last annual report, your committee commented upon the lack of certainty and continuity which had plagued the Small Defense Plants Administration and the Small Business Administration in the 2½ years of their existence. During 1954, however, for the first time, only the budget, the annual concern of every executive agency, was a question mark in the operational status of the Small Business Administration.

Wendell Barnes, formerly Chief Counsel of the SBA was named Acting Administrator on October 30, 1953, and soon after Congress reconvened in 1954, Mr. Barnes' name was sent up to the Senate for confirmation as Administrator. From early in February through the end of the year, then, the agency had an Administrator and also an expiration date which was as far distant as June 30, 1955. For these reasons, the SBA was able to proceed without most of the ever-present question marks which had marred the record of the SDPA.

Furthermore, the SBA profited from the fact that its legislative authority and current program stemmed largely from the experiences of the SDPA.

Naturally, every close observer of the Small Business Administration, or any other organization, finds program priorities he would have revised or administrative actions he would have changed. In the following sections of this chapter, certain exceptions will be taken to activities of the SBA. Nonetheless, this conclusion seems inescapable: the Small Business Administration took many forward steps in realizing the vital role marked out for it by the Congress and the Administration. It is hoped that further advances in policies and techniques will enhance the agency's record for 1955.

Section B. Financial Assistance Programs

From the outset, the congressional sponsors of the legislation establishing the Small Business Administration were convinced that the agency's most important action program was in the field of financial assistance. Committee and floor discussion in both Houses indicated that the Members of the Senate and the House of Representatives felt that this organization was designed to take up at least part of the gap which would be left when the Reconstruction Finance Corporation's authority came to an end. It was almost universally agreed that the legitimate credit needs of small businesses could not be met by private financial sources, and for that reason Congress authorized the SBA to make direct loans and to join the banks in offering loans to those small concerns which were unable to find financing elsewhere.

During the first few months of the agency's life, however, this important phase of its task was all but ignored, and it was not until November 16, 1953, that the first SBA loan was awarded. By the end of 1953, only 25 business loans had been made. Nonetheless, a new pattern had been established with less restrictive requirements approved by the Loan Policy Board and with a definite mandate from Congress and the White House to get on with this program.

On January 1, 1954, the Small Business Administration faced an overwhelming backlog of loan applications with a staff completely unable to cope with a task of such magnitude. By giving the lending operation first priority and by assigning a large proportion of his entire staff to this job, the Administrator was able to get abreast of the flow and gradually cut into the backlog which had accumulated. The budget for the fiscal year of 1955 recognized the importance of the financial-assistance program and was a more realistic grant of staff and funds than had been the 1954 appropriations pattern.

Even at the end of 1954, however, the SBA had a backlog of applications, the processing of which was not as expeditious as desirable, since the credit needs of small firms are usually urgent. With the exception of long-term capital for expansion purposes, loans are usually made for immediate requirements for working capital and consolidation of obligations. These loans often must be made without delay or the opportunity which prompted the application will already have passed and the small firm will have been found wanting in its financial strength.

One action taken by the agency during 1954, which greatly helped in cutting the time required for processing many of the loans, came with the approval of decentralized lending authority to regional offices in certain cases. Under this policy, regional offices were given the power to approve loans of up to $50,000 in which local banks were participating at least to the extent of 25 percent of the amount of the loan. A large number of applications fall in this category and an improvement in the time required to approve or disapprove such loans has been readily apparent. The SBA is giving thought to enlarging this grant of authority to the field, now that the regional offices are better equipped to handle such activities.

The following table gives a complete picture of the Small Business Administration's lending program since loan applications were first accepted on October 1, 1953:

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Small Business Administration report of business loan application activity, cumulative through Dec. 31, 1954

	Number	Amount
Cumulative total received in regional offices, through Dec. 31, 1954	4,108	$237,201,379
Cumulative processed and forwarded to Washington Office through Dec. 31, 1954	2,953	175,088,818
Cumulative acted upon by Washington office through Dec. 31, 1954	2,925	172,594,318
Disposition of application:		
Approved:		
Participation loans:		
Washington office	597	37,984,602
Regional offices	156	4,503,289
Total	753	42,487,891
Direct loans	369	16,912,542
Subtotal	1,122	59,400,433
Declined	1,959	112,229,430
Withdrawn by applicant	683	39,542,743

RECAPITULATION

Pending in regional offices	316	$17,753,028
Pending in Washington office	28	2,494,500
Applications processed and withdrawn	3,764	216,953,851
	4,108	237,201,379

From the beginning of the program, the percentage of loan applications approved for SBA aid, has ranged from 35 to 40 percent. As of December 31, 1954, about 36.4 percent of the requests on which a decision had been made were approved. While it is still too early to judge whether this represents too lenient or too strict a loan policy, it is significant that there is only one loan on which payments are more than 30 days in arrears. Furthermore, your committee has the impression that the lending authorities in the agency have taken seriously the two criteria placed upon them: to assist worthy small businesses which are unable to obtain credit elsewhere; and to protect the interests of all the citizens of the Nation by approving only loans which have a reasonable expectation of repayment in full.

Statistics drawn up by the SBA show that almost half of the dollars given to successful applicants are utilized as working capital. Facilities and consolidation of obligations account for most of the rest with the purchase of equipment being earmarked for less than 10 percent of the loan total.

Use of proceeds of business loans approved, cumulative through Dec. 31, 1954

Use	Loans approved	
	Amount	Percent of total
Total	$59,400,433	100.0
Working capital	25,239,784	42.5
Facilities	14,956,516	25.2
Consolidation of obligations	13,295,074	22.4
Equipment	5,909,069	9.9

Another interesting table indicates that only a little more than half of the Small Business Administration loans have gone to manufacturing concerns. Wholesalers and retailers accounted for almost a quarter of all 1953 and 1954 approvals. The wide range of small-business activities represented in the following table indicates the validity of the decision not to limit the SBA to the needs of manufacturers alone.

Business loans approved, by industry, cumulative through Dec. 31, 1954

Industry	Number	Gross amount
Grand total	1,122	$59,400,433
Manufacturing industries (total)	602	34,971,805
Ordnance and accessories	3	114,300
Food and kindred products	95	5,791,760
Textile mill products	18	1,241,500
Apparel and other finished products	10	390,167
Lumber and wood products (except furniture)	64	3,445,700
Furniture and fixtures	20	1,310,500
Paper and allied products	8	536,850
Printing, publishing, and allied industries	18	808,000
Chemical and allied products	24	1,546,250
Petroleum and coal products	6	315,000
Rubber products	7	435,500
Stone, clay, and glass products	48	2,077,500
Primary metal industries	24	1,426,000
Fabricated metal products (except ordnance, machinery, and transportation equipment)	62	3,689,500
Machinery (except electrical)	110	6,849,400
Electrical machinery, equipment and supplies	26	1,768,000
Transportation equipment	24	1,767,378
Professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks	6	350,000
Miscellaneous manufacturing industries	20	1,058,500
Nonmanufacturing industries (total)	520	24,478,628
Greenhouses, crop specialties, forestry, fisheries, poultry processing, etc.	18	552,000
Mining	23	1,713,600
Construction	57	2,969,785
Transportation, communication, and other public utilities	94	7,351,719
Wholesale and retail trade	256	9,646,557
Services, etc.	72	2,244,967

Several other programs of financial assistance have also been assigned to the Small Business Administration. A relatively routine, but nonetheless important, task has been the handling of disaster loans for businesses and individuals who have been harmed by catastrophies such as floods, hurricanes, tornadoes, or earthquakes. The processing of these loan applications varies according to the local requirements but flexibility and speed are emphasized with a large amount of authority delegated to regional or special field offices which are set up at the scene of extensive disasters. In addition to control over the disaster loans it has made, the SBA has also been given responsibility of liquidating some 3,400 such loans remaining in the Reconstruction Finance Corporation portfolio. Through December 31, 1954, the agency made 970 disaster loans with a total dollar credit of $5,475,534.

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Disaster loan application activity, cumulative through Dec. 31, 1954

	Number	Amount
Applications received	1,277	$10,332,970
Applications withdrawn	85	666,073
Net available for consideration	1,192	9,666,897
Applications declined	142	1,679,637
Loans approved	970	5,475,534
Reduction in approved amount from amount requested		575,825
Applications pending on December 31, 1954	80	1,935,901

A third line of attack on the financial needs of small businesses has taken the form of counseling businessmen who have asked for assistance at the various SBA offices. Through these conferences, private sources of credit are often discovered and poorly conceived loan applications are discussed informally and amended before they are actually filed. This type of activity should be expanded to prevent delays caused by obviously deficient loan applications and also to take care of as many credit needs as possible through private channels, thereby husbanding manpower and the agency's revolving fund for cases where no alternative source of funds exists.

Finally, those concerned with financial assistance at the SBA are fostering and working with local, state and regional development corporations which are established to provide long-term credit for business needs within their jurisdiction. Here again is a useful supplement to the direct lending program of the small-business agency which can at the very best meet only a minute fraction of the total financial requirements of the four million small-business concerns in the Nation.

Section C. SBA Activities in the Field of Procurement

Undoubtedly the second most important responsibility assigned to the Small Business Administration comes in its efforts to guarantee that small firms receive a fair share of military procurements. Even after the cease-fire in Korea, it became apparent that the United States would be forced to devote indefinitely many billions of dollars to national defense programs. Your committee has always devoted a major share of its resources and time to the military procurement situation, and, as supporters of the Small Business Act of 1953, the members of the committee naturally sought to delegate effective powers to the SBA to assist it in meeting its task in this field.

This is a critical subject for several reasons: First of all, the military establishment is the biggest customer for the producers of the Nation and it would be unfair if small concerns were precluded from obtaining a full share of that business. Secondly, the continued vitality and prosperity of small companies can well spell the difference between victory and defeat in an all-out emergency, since these firms account for approximately 40 percent of all the productive capacity of the country. Finally, these small firms often bring a large measure of competition to the bidders' lists and can assure the taxpayers the best prices on military goods.

The fourth method by which the SBA and its predecessor agency have sought to guarantee a fair share of military business for small firms has been the advisory services they have offered. Firms have been helped to get on bidders' lists; synopses of procurement actions have been compiled and circulated; appointments have been arranged; copies of specifications and bid forms have been filed; and an inventory of production facilities has been compiled to assist a large number of small businesses to take the first steps toward becoming suppliers to the Military Establishment. As fewer and fewer companies require this preliminary servicing, it would seem logical for the SBA to shift its resources from these tasks to more positive and comprehensive programs.

Section D. Production and Management Assistance

The third major field of the Small Business Administration's one-stop service for independent businesses comes in its programs of production and management assistance. In some cases these duties overlap activities in the field of financial assistance and military procurement, but, taken altogether, the three phases of action constitute a broad approach to the problems of all small businesses.

With the very concrete expression of demands upon the SBA for help in the financing and procurement fields, there is always a danger that the more nebulous and longer-range activities, grouped together in the category of production and management assistance, may be relegated to a stepchild status. To date, the agency has made forays into this area through the publication of a series of pamphlets distributed to small-business firms on topics falling in the classification of management aids, technical aids, and management booklets. Many of these short volumes are published and distributed in concert with the Department of Commerce to guarantee the widest possible circulation and to avoid duplication of effort by the two business agencies.

An innovation has been the series of courses on small business conducted by some 39 colleges and universities in concert with the Small Business Administration. Your committee has received warm endorsements of the principle, and the actual operation of these courses and their extension into other sections of the country through agreements with local business schools appears warranted. Every survey of the reasons for small-business failures has found a lack of managerial skills by far the most important cause. It is also apparent that the basic knowledge and skills required for business entrepreneurs is becoming ever more extensive and complex. Therefore, the SBA must continue to develop action programs which will make available to those who need it most the fundamental store of management information and training.

In addition to these and other formal programs, the Small Business Administration also deals with individual requests for assistance on specific problems. While this is a time-consuming operation, it is important in pointing out zones of friction within the economy. Your committee hopes that the SBA will analyze these cases with a view toward determining whether the problem involved is unique or whether it uncovers a pattern which should be attacked on a broad front.

The SBA's chief program in attempting to increase the share of military business going to smaller firms is the joint determination mechanism which earmarks certain purchases, in whole or in part, for small producers only. This program will be described and evaluated in Chapter II of this report.

Another most important means for increasing the participation of small businesses in military procurement and in obtaining lower prices on Government orders is the issuance of certificates of competency by the Small Business Administration. It often happens that contracting officers are unwilling to grant contracts to smaller companies even though they are low bidders, because of doubts about their ability to produce. In such cases, the SBA is called upon to make an examination of the facilities, managerial skills and financial resources of the low bidder. If the findings are satisfactory, the SBA certifies the concern as competent as to capacity and credit to fulfill that contract.

As of December 31, 1954, the Small Business Administration had received 113 applications for certification; of these, 53 had been approved to take contracts totaling $6,745,610. One of the few instances where actual savings to the Government by small-business programs can be verified arises in this connection, since the certified low bidder in these 53 cases represented total prices $426,235 below those of the next lowest bidder who presumably would have received the contract had the SBA not issued its certificate of competency.

Despite many forebodings and gloomy predictions of failure by the contracting officers of the military services, the record of the SBA-approved contractors has been outstanding up to this time. Only a few of the contracts are running behind schedule—a record far above the average accomplishment of procurements studied by your committee in other contexts. It is apparent that this program is a most worthy one and one which must receive the full cooperation of the Department of Defense.

At present, when such a large percentage of military dollars goes into large and complicated weapons of war, such as planes, ships, and missiles, the greatest opportunity for many small businesses comes through subcontracting component parts and supplies from prime contractors. Recent cutbacks in military orders have played havoc with many established prime-subcontractor relationships as the primes have pulled increasingly large amounts of work under their own roofs and have cut out many of their suppliers completely. For example, in many cases studied by your committee, it has been found that a 20- or 30-percent cutback in the amount of the prime contract has meant a hundred-percent cutback for many of that corporation's subcontractors. This subject will also be treated in chapter II, but the SBA has a crucial task in attempting to ameliorate this troublesome and urgent problem spot.

It is the present feeling of your committee that the Small Business Administration has not devoted a sufficiently large share of its attention to the procurement field in general and to the subcontracting area in particular. The same specific approach will not be successful in all instances and the informational approach will be useless in meeting the problems of these established suppliers. Only positive programs by the SBA and by the military will rectify a potentially dangerous situation.

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CHAPTER II

MILITARY PROCUREMENT

Section A. Introduction

During the past year, your committee has devoted much of its time to the study of Government procurement. Throughout the years, the key goal of all elected and appointed officials in this field has been the attainment of a fair and just share of prime contracts going to small-business firms. This aim retains its position of importance in the work of the committee. However, the committee realizes that the percentage of such contracts awarded to small concerns depends upon the workings of the vast and complicated system which must be employed to reach such a goal. Thus, a strenuous review of this system has been accomplished, and it is hoped that through the cooperation of the various Government agencies involved, improvements can be made in the general procurement system.

It should be noted at this point that all business and Government agencies have experienced dislocations due to the conversion from the highly geared war economy of the Korean war period to a reduced defense-production economy. This transition period has been fraught with changes in Government buying policies, which have caused much concern within the ranks of small business and among Government officials charged with the responsibility of procurement functions.

Section B. Defense Department Directive on Mobilization Base

A recent development which has deeply concerned your committee pertains to Department of Defense Directive 3005.3, which was issued on December 7, 1954. Although top officials of the Department of Defense have assured the committee that the directive does no more than restate present policies of the Pentagon regarding the mobilization base, there are many aspects of the matter which have not been sufficiently explored or spelled out to protect the position of smaller firms as military suppliers.

The day after the subject directive was made public, Senator Thye, as chairman of your committee, wired the Secretary of Defense asking for a full explanation of the purposes and the meaning of the order. Senator Thye stated that he feared the directive would establish some sort of an exclusive listing of firms that were to be considered essential in that they, and they alone, had qualified to produce some 1,000 items that were on the so-called "preferential planning list." The chairman of your committee asked how firms could become qualified suppliers of these items; he also questioned why the Small Business Administration had not been consulted before this far-reaching directive was issued. Mindful, also, of most small-business firms' suspicions of the award of contracts by negotiated procedures, Senator Thye asked whether the new directive did not leave the door wide open to

Section E. Conclusions

While there are still problem areas into which the Small Business Administration has not yet moved and while there is some question whether the agency has moved vigorously enough in the fields of lending and procurement, the balance sheet shows that the SBA has made good strides forward and should be given an extension of life. In this connection, your committee is hopeful that the appropriate legislative committees of both the Senate and the House of Representatives will take early action in reporting small-business legislation to the floor for debate and passage, so that there will be no disrupting hiatus and period of uncertainty as the deadline of June 30, 1955, approaches.

It is the plan of your committee to hold hearings early in 1955 to obtain the full record of the SBA and to determine whether or not to recommend changes in the basic legislation and under what conditions the SBA's life should be extended. At the conclusion of those hearings, it will be more evident what changes, if any, should be made in the agency's lending program and in its policies on military procurement, and whether it has slighted other important aspects of its task.

At this time, your committee does feel that a fundamental portion of the SBA's mandate has been relegated to a subordinate position. For example, it is felt that the semiannual reports of the administrator to the President and to the Congress are the only evidence of a search for a rounded approach to the problems of all small-business firms. Your committee maintains that the Small Business Administration should be working more closely with the Department of Defense and the Office of Defense Mobilization in their planning for future emergencies, for these plans can spell the ruin of a significant section of the small-business community if the peculiar needs of those companies are overlooked. Throughout the pages of this report, your committee will point out instances where it feels that our national policy has not emphasized sufficiently the vital role of that segment of the economy which provides almost 40 percent of goods and services and which employs 40 percent of the labor force.

In the formulation of changes in the Internal Revenue Code, the Small Business Administration should serve as a collecting house for the views and problems of small companies. In the task of drawing up controls on scarce materials and prices and wages for future mobilizations, a representative of the SBA should sit with those entrusted with such important jobs. In planning and placing "phantom orders" for "M-Day," the military departments and their technical services should consult with SBA representatives. While formulating every policy which has any impact upon the economy of the Nation and thereby upon small-business establishments, executive agencies and congressional committees should be able to count upon the SBA for the basic statistical data and fundamental approach which will guarantee the United States a vigorous and competitive free enterprise system.

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that method of awarding military business when it specifically stated that—

> in carrying out this program, it is expected that the authority contained in sections 2 (c) 1 and 16 of the Armed Services Procurement Act will be utilized.

On January 8, 1955, Assistant Secretary of Defense Thomas P. Pike replied that he felt that your committee's fears about this policy directive were largely groundless, since "it is my view that this directive will not operate to the detriment of the small-business community." His letter also presented the opinion that although from 70 to 75 percent of the dollar value of all military contracts would be covered under the terms of Directive 3005.3, very few of the items were suitable for small-business firms.

Senator Thye did not feel that all his questions had been answered by Secretary Pike and on January 17 addressed another letter to the Department of Defense, which was answered on January 28 by R. C. Lanphier, Jr., an assistant to Assistant Secretary Pike. The directive and the exchange of correspondence are reprinted in Appendix C. It is evident that a large area of disagreement still exists and that many of the ramifications of Directive 3005.3 are differently foreseen by your committee and by the Department of Defense. For that reason, it is planned to invite these top officials to appear before your committee as soon as possible to obtain from them the reasons for issuing the directive and to obtain assurances that small, independent producers are in no way adversely affected by it.

Section C. Problem Areas in Government Procurement

Your committee has attempted to evaluate the entire procurement picture and to concentrate its efforts in those areas which have, over a period of time, presented the most troublesome problems. It was thought that with such an approach, the committee could deal with specific subjects and could accomplish more concrete results. A review of this work is presented in the following paragraphs. A more complete recital of what the committee found was spelled out in its Military Procurement Report, dated August 14, 1954.[1]

1. Advertised versus negotiated procurement

Each year the committee receives complaints from sellers that the Government continues to purchase an increasing share of its goods and materials by negotiated contracts rather than by advertised contracts.

In order to establish a foundation for a study of this topic, one must determine the authority for each type of buying. The laws pertaining to Government purchasing establish the advertised method of contracting as the preferred technique. This is found in the Armed Services Procurement Act and the Federal Administrative Services and Property Act.

Within the same laws the Congress recognized the need for allowing exceptions to the advertised methods. This recognition was spelled out in the form of exceptions which would allow the agencies to purchase through negotiated contracts. For example, there are 17 exceptions listed in the Armed Services Procurement Act.

[1] Rept. No. 2487, 83d Cong., 2d sess., August 14, 1954.

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The committee's chief concern is with subsection 2 (c) (1) of the Armed Services Procurement Act, Public Law 413, 80th Congress. This section provides:

> All purchases and contracts for supplies and services shall be made by advertising, as provided in section 156 of this title, except that such purchases and contracts may be negotiated by the agency head without advertising if * * * determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress.

This section has been construed by the agencies as giving to them wide and broad authority to negotiate contracts. An ever-expanding use of this section makes consideration of the other exceptions needless at this time.

The Comptroller General has stated that the legislative background of the section indicates that Congress intended that such broad powers of negotiation would be used to meet abnormal market or procurement conditions resulting from an acute national emergency or from actual war conditions. Your committee has found that such widespread use of the powers of negotiation has impeded the work of the Comptroller General in his review of specific procurement actions and general procurement policies.

Since 1950 approximately 90 percent of the dollar value of all purchasing has been awarded by negotiation, and the emergency exception has been widely used to justify this sharp departure from the basic method of advertising.

The committee strongly feels that an attempt should be made by the agencies to place as many procurement actions as possible by the method of advertising. It further feels that, if negotiation is necessary, it should be justified within the limits of the other specific exemptions provided by law. In this area the agencies have displayed a reluctance bordering upon stubbornness to retreat from the wide authority to negotiate presented in the elastic section already cited.

So that no distortion of facts is inferred from the committee's stand, it should be stated that negotiation does not preclude competition. In most cases negotiation is carried on with several firms so that competition as to price exists to some degree.

However, the committee has found enough evidence to question some of the methods used in the negotiation of contracts. This aspect of negotiation is specifically discussed in a subsequent section with reference to the purchase of tugboats by the Navy.

Statistics provided the committee do not uniformly reveal whether small businesses receive more contracts under one system or the other. However, the small-business man cannot understand why the Armed Forces tend to flout the intent of Congress, and they argue that they might have a chance to bid on contracts which are advertised, whereas when negotiation is used, they do not hear about the procurement and are thus precluded from submitting a bid or proposal.

2. Small-business suitability

In accurately determining the percentage of prime contracts awarded to small business, your committee, as well as Defense Department officials, recognized the inadequacies of the initial reporting system. Prior to 1952, the services determined the total dollar volume of procurements as well as the total number of actions and then reported the number of procurements out of the total that went

to small business. This presented a distortion when it was realized that there were certain items which small business had never furnished and perhaps never could furnish due to limitations of plant, facilities, labor, and finances. This factor within the system reflected a lower percentage going to small firms than was actually the case.

During the year 1952, the Defense Department adopted a new system which sought to correct this situation. The "suitability" test was devised, wherein it was decided that certain items were within the area of suitability, and certain items were outside. In compiling statistics under this system, the first step was to establish all the items which small manufacturers were considered able to produce. The second step was to take the percentage of suitable items actually awarded to small business. This was an improvement over the former method. However, your committee discovered certain pitfalls and inadequacies, which became a part of the material considered at the military procurement hearings held in the spring of 1954.

Your committee felt that the term "suitable" itself was open to misinterpretation. Many people felt that the term was used to set forth what small plants could produce and what they could not produce. This was not the intent of the Defense Department in using the term. The use of the term was only for statistical purposes.

It was found, however, that the Army, Navy, and Air Force all used slightly different criteria in arriving at a determination of what fell within the area of suitability.

The committee also felt that the reporting services would have to be constantly alert in their application of the term so that small business was not in any way precluded from bidding on contracts. To put it another way, the committee stated in the military procurement report of August 14, 1954, that "the clear responsibility of the services is to attempt at all times to increase the area of suitability."

The committee suggested the use of the term "small business potential" as a possible substitute in future statistical calculations.

3. Subcontracting

The introduction to this section of the report called attention to the fact that a transition from a war economy to a reduced, defense-preparedness economy brought with it certain problems for all manufacturers and the Government buying agencies. This is reflected most clearly in the field of subcontracting of portions of military contracts by prime contractors to other producers.

Experience shows that when there is a decrease in general military buying the subcontractors will feel the impact more acutely than the prime contractors. During the past year that situation has prevailed.

Complaints from all industries have brought to the attention of your committee the serious ramifications of this problem. A sizable reduction in overall prime contracts has taken place. This has caused the large contractors to withdraw work from subcontractors in an effort to maintain a high rate of production and employment. In turn, the small firms involved in this chain reaction have had to change their operations quickly in an effort to take up the slack. In some instances, small firms had to shut down operations entirely.

Your committee was concerned with this problem in 1952 and attempted, by a concentrated nationwide survey of prime contractors, to alert the buying agencies to the problem and to generate a more

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comprehensive subcontracting program within the Department of Defense.

To date, all the agencies have made some efforts to come to grips with the realities involved.

The Air Force has already launched a vigorous nationwide program with its prime contractors in an attempt to maintain the maximum number of subcontractors in its procurement program. In September 1954 Maj. Gen. David H. Baker, director of procurement and production, Air Materiel Command, addressed a number of the Air Force's chief prime contractors on the subject of subcontracting. At that time, he stated that "the Air Force was most concerned about 'a possible movement to pull in such subcontracts.'" General Baker made it plain that the Air Force would expect the prime contractors to take their share of any retrenchment and would do all it could to avoid the shifting of the major impact to the subcontractors. It was pointed out that all Air Force contracts contain a provision requiring maximum subcontracting and utilization of small-business concerns and that the Air Force would check all its prime contractors to determine if they were living up to the terms of their contracts in this regard.

The response to this plea has been encouraging to the committee. The Air Force has stated that it intends to pursue vigorously the subcontracting aspect of its procurement system.

The Navy began a reevaluation of its subcontracting program in October and November 1954. Navy prime contractors were visited by Navy officials, and further efforts on the part of the Navy will be forthcoming during 1955.

The Army has also recognized the problem and has indicated that similar steps as those taken by the Air Force and Navy will be initiated during the coming year.

Various solutions have been presented to the committee by business concerns which have felt the effect of retrenchment in military procurement:

1. More mandatory language concerning subcontracting should be used in military contracts.
2. An expansion of the first proposed solution suggests that the Congress or Defense Department officials stipulate in the contract an actual percentage of the total contract value which would be subcontracted.
3. All Government-owned equipment in prime contractors' plants which constitutes duplication of equipment in the subcontractors' plants should be withdrawn.
4. An aggressive subcontracting program carried on by all Departments would serve as a solution.

All of these suggestions will be considered by your committee during the coming year. There is a full recognition of the difficulty of legislating contractual terms and legislating percentages of contracts which would be placed in the hands of subcontractors. The vast majority of persons concerned agree that a solution short of legislation would be most desirable.

Perhaps the most effective work can be done in the area of solutions Nos. 3 and 4. The committee has always been concerned with the use of Government-owned equipment being used in competition with firms which have similar equipment of their own. In addition to the

excellent performance on prior Government contracts. It was pointed out that such a short delivery schedule would force the contract into the hands of one of the large rubber companies and that the small manufacturers could not possibly meet the stringent schedule.

After a thorough investigation by both the committee and Army Ordnance, it was determined that the delivery schedule could be stretched out so that quantities would be delivered beginning in November 1954, and spread over the first 6 months of 1955.

This change in delivery requirements allowed small firms to participate in this specific procurement. This case is illustrative of the general problem. The committee has found that in some instances, unrealistic delivery schedules result from a non-existent "urgent requirement" for the item. An indiscriminate use of "urgent procurement" will, in many cases, have an adverse effect upon the general small-business policy of the Defense Department to insure a fair and just share of contracts going to small firms.

In addition to working a hardship on small-business concerns, the unrealistic delivery schedule also leads to waste in the use of funds and to the proposition that the Government may not receive the best possible quality in the goods delivered.

(*b*) *Inadequate specifications.*—The problems inherent in drawing specifications are well known to all parties involved in Government purchasing. Faulty or inadequate specifications place an expensive burden upon the business firm preparing a bid or proposal and lead to waste and extravagance for the Government agencies. A case in point is that of the Vagim Machine & Engineering Co. of Fresno, Calif., which was heard by the Military Procurement Subcommittee during its public hearings in 1954. The committee found that faulty specifications was one of the major causes of the delay in getting the items contracted for. The delay was costly to the small-business firm, the Government agency, and to the taxpayers.

Your committee has found that all Government agencies are keenly aware of this particular problem and that there is a constant effort to screen and review specifications so as to eliminate the difficulties and ramifications which result.

(*c*) *Time allowed for submission of bids.*—Complaints have come to your committee that the time allowed for the submission of bids or proposals is so short that small firms without extensive staffs are precluded from participation. The effects of this problem are closely related to those which stem from the unrealistic delivery schedule. Insufficient time for the submission of bids from both large and small producers deprives the Government of potential sources of supply and a possible saving in money. In this type of case, your committee has found that the "urgency requirement" may be a contributing factor in calculating bid lead time. The need for careful and effective overall planning of the procurement action is reflected in these cases.

(*d*) "*Or equal*" *specifications.*—Each year cases come before your committee which involve the use of the "or equal" specification in procurement actions. The use of this type of specifications favors the company which might have made the item previously and works a distinct hardship on all companies which have not participated in similar procurements in the past.

procurement problems presented, this practice also draws the Government into competition with private business enterprises. This particular aspect of the problem is discussed further in the section of this report dealing with Government competition with private business and in the section on machine tools.

Your committee will be better able to evaluate these possible solutions when it determines the effectiveness of the subcontracting programs now being carried on by the military services.

4. Progress payments

During the latter part of 1953 and the early part of 1954, there was much concern within the small-business community in regard to the Defense Department's policy on progress payments.

Interpretations of Department of Defense Directives during that period led some to the conclusion that the use of progress payments was to be eliminated or curtailed to such an extent that small businesses would not be eligible to make use of them.

These interpretations reached the pages of trade journals and were widely circulated. In an effort to determine the true policy of the Defense Department, your committee called before it witnesses who could define the policy.

The committee found that the directives that had been issued were variously interpreted by some military authorities in the field and that clarification was necessary. The committee was assured that there was no intent to deprive any deserving small-business firm of the right to utilize progress payments.

The committee will again review this particular aspect of procurement during the coming year.

5. Research and development

Your committee looks upon the general field of research and development as a very real source of contracts for the small-business man. The military departments are in agreement with the committee and are constantly looking for opportunities to place such contracts with small companies.

In many instances, it has been found that the small firm is much more suited to research and development work than the large contractors. This field should be carefully considered by those small-business establishments qualified to take part in this part of the procurement program.

6. Miscellaneous problems

There are certain long-standing problems which will continue to plague small firms seeking Government contracts. These include unrealistic delivery schedules, inadequate specifications, insufficient time for the submission of bids or proposals, the use of "or equal" specifications, and lack of accurate information concerning actual requirements of items.

(*a*) *Unrealistic delivery schedules.*—Cases involving unrealistic delivery schedules reveal that in many instances, small firms could not possibly supply the required item within the delivery dates set down. As an illustration, the committee calls attention to a procurement of 95,221 tires by Ordnance. In this instance, deliveries of the tires were to be made in November and December, 1954. The committee received a complaint from a small tire-producing firm with a record of

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1. Department of Defense

During 1954, the Department of Defense undertook a reevaluation of its small-business policy, which culminated in the release of Department of Defense Directive 4100.10. This directive seeks to set forth in clear terms the basic policy of the Defense Department in regard to small-business participation in military procurement, and, since it should receive the widest possible distribution, it is included in its entirety at this point:

December 16, 1954
NUMBER 4100.10

DEPARTMENT OF DEFENSE DIRECTIVE

Subject: Revised Department of Defense Small Business Policy
Reference: (a) Directive 4100.10, Revised Department of Defense Small Business Program, 8 September 1952

I. PURPOSE

The purpose of this Directive is to establish a more comprehensive and more effective Department of Defense Small Business Program.

II. CANCELLATION

Reference (a) listed above is cancelled.

III. DEFINITIONS

A. A small business concern is one which, including its affiliates, employs, in the aggregate, fewer than 500 persons. This definition shall be in effect for all procurement matters and those directly related to procurement, subject to modification by the Small Business Administration.

B. An "established supplier" for an item is a concern which is a "source of supplies" as defined in ASPR 1-201.9 and which has supplied the item satisfactorily to one or more military departments; or one with which mobilization planning is in effect.

C. A "potential supplier" of an item is a concern which is a "source of supplies" as defined in ASPR 1-201.9 and which is considered to be technically and financially competent to supply the item, but which is not an established supplier.

D. A "fair proportion of the total purchases and contracts for supplies and services for the Department of Defense to be placed with small business concerns" is defined as that proportion which small business concerns can win in open competition, provided they are given an equitable opportunity to compete.

E. An equitable opportunity to compete (with respect to the competition by small business firms for Defense procurement of an item, the bidders' mailing list for which contains the names of established or potential small business suppliers) is defined as that opportunity which exists when the following conditions are met:

1. The bidders' mailing list of the military department for the item includes the names of such established or potential small business suppliers as have made acceptable application for inclusion in the list.

2. The Invitation for Bids or the Request for Proposals are sent to all the firms, large and small, on the list; or, where they are sent to less than the complete list, a pro rata percentage of small firms is included among these solicited.

3. The quantities are appropriate, the delivery schedules reasonable, the time allowed for the preparation and submission of bids adequate, and the specifications and drawings sufficient to enable small business firms to compete.

4. Proposed procurements are publicized as required by existing regulations.

5. The definition of a fair proportion in III D above shall not in itself be used as a reason for refusing to make joint determinations as provided in Department of Defense Directive 4100.9, 10 March 1954.

IV. GENERAL POLICY

It is the policy of the Department of Defense that a fair proportion of the total purchases and contracts for supplies and services for the Department of Defense shall be placed with small business concerns, whether as prime contrac-

A recent case came to the attention of your committee when Army Ordnance sought to procure certain spare parts for vehicles. In soliciting bids, Ordnance utilized the specifications of a commercial manufacturer, "or equal." A small Illinois firm desired to bid on the contract but could not get the proper drawings in time to compete. This illustrates the basic problem involved. The use of the "or equal" specification discourages potential suppliers from submitting bids. This subject has been taken up with the procurement authorities at hearings and in conferences over a period of years. Your committee is assured that every attempt is being made to eliminate this type of specification, insofar as possible, from procurement.

(*e*) *Actual requirements of items.*—In recent months, your committee has had occasion to work with cases where the purchasing agencies did not possess an accurate appraisal of the actual needs. This again points up the necessity for careful planning of the procurement action from beginning to end. In one case, the Signal Corps sought to purchase a quantity of radiosondes, which represented an expenditure of approximately $2 million. Investigation showed that the Signal Corps was purchasing for the Air Force and that only one company had been contacted. The committee was first told that the need for the item was urgent and that there was insufficient stock on hand. A subsequent report revealed that there was no real urgency involved and that there was a much larger inventory of radiosondes than was at first reported.

Had the Signal Corps obtained an accurate appraisal of current inventory before proceeding with the procurement, it would have been possible to invite bids or proposals from additional firms. This would have introduced the element of price competition into the purchase with a possible saving to the Government and the taxpayers.

A similar case involving the purchase of camelback for recapping tires also came to the attention of your committee during the past year. In this case, it was found after careful investigation that the needs in the first instance were exaggerated and not as urgent as initially reported.

Such cases illustrate faulty and inadequate planning in procurement. Your committee intends to pursue this subject not only as cases arise but also at public hearings held for the purpose of analyzing the procurement system.

The problems discussed herein and others not mentioned produce a demoralizing effect upon small-business men who would like to participate in Government procurement. The responsibility for solving these procurement problems rests with those officials in all echelons of command who are charged with the duties of Government procurement. Your committee will continue working to remove these obstacles from the path of Government purchasing.

Section D. Small-Business Programs

Small-business programs within executive agencies have become an integral part of Government administrative procedures. Each year your committee calls on the military departments and certain civilian agencies for an accounting and review of their particular small-business policies.

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4. Small Business Specialists will perform such functions as are prescribed for them by the Small Business Program of their respective Departments in implementation of the Department of Defense Small Business Program.

B. Procurements of items, the bidders' mailing lists for which include the names of established or potential small business suppliers and such other procurements as may be considered appropriate, will be handled by contracting officers in such a manner as to insure that small business concerns receive an equitable opportunity to compete for the business. To this end the Military Departments will include in their regulations or instructions provisions requiring that, as to each such procurement, the following conditions prevail:

1. The procurement is divided into, or bids or quotations may be submitted on, such reasonably small economically sound production lots as will enable and encourage small business concerns to make bids or quotations on such procurement or portions thereof, unless such division is clearly to the disadvantage of the Department.

2. The required delivery schedules, consistent with military necessity, are such as not to preclude competent small business concerns, including potential suppliers, from meeting them.

3. Specifications and drawings when applicable, or in their absence, all necessary pertinent data are made available to small business concerns in order that they may intelligently compute their bids or proposals.

4. Adequate and appropriate publicity, including the use of the Synopsis of Proposed Procurements in accordance with ASPR 2-206, is provided on a timely basis.

5. Sufficient time, consistent with military necessity, is allowed to enable potential sources as well as established sources to adequately prepare and submit their quotations.

C. The Small Business Administration will, by agreement with the Department of Defense, assist in the accomplishment of those elements of General Policy (Section IV A and E).

1. The military departments shall afford to the representatives of the Small Business Administration upon request the opportunity to inspect, study and transcribe information from the military bidders' mailing lists, and will make available to the Small Business Administration representative such additional information as may be at hand and as may be necessary to enable the Small Business Administration representatives to determine whether in their opinion small business firms are proportionately represented on any specific list.

2. In those cases in which, in the opinion of either the Small Business Administration or the appropriate military department, small business concerns are not properly and proportionately represented, the Small Business Administration or the military department will endeavor to discover additional potential suppliers and encourage them to apply for inclusion in the list in question in the manner prescribed by the military department.

D. The Military Departments will give to representatives of the Small Business Administration access to any and all lists of small business firms or facilities which they have prepared for the purpose of consolidation by the Small Business Administration with such combined inventories of small business concerns and their facilities as the Small Business Administration may deem it advantageous to maintain.

E. Mobilization Planning. The general principles of the Department of Defense Small Business Policy providing for giving small business firms an equitable opportunity to produce a fair share of Department of Defense requirements of goods and services shall be extended to mobilization planning. To the maximum extent possible consistent with considerations of efficient production, geographic dispersion of facilities, and other military factors, those elements of Department of Defense engaged in mobilization planning shall, with respect to items, the bidders' mailing lists for which include the names of established or potential small business concerns, conduct planning with small business firms.

F. The chiefs of the small business offices of the Military Departments, together with the Small Business Advisor to the Assistant Secretary of Defense (Supply and Logistics), will hold monthly meetings with such officials of the Small Business Administration as are designated by the Administrator, for the purpose of evaluating reports, statistical and otherwise, concerning the effectiveness of the Small Business Program and to resolve any difficulties that may

tors, subcontractors, or suppliers. With respect to prime contracts, this objective shall be accomplished by affording small business concerns an equitable opportunity to compete. This policy applies to both advertised and negotiated procurements.

A. Military bidders' mailing lists shall include the names of established small business suppliers and of such potential small business suppliers as have made acceptable application for inclusion on such lists.

B. In accomplishing a procurement, the procuring officer shall insofar as it is consistent with military necessity, solicit bids or proposals from all the business concerns on the list or, where the entire list is not being solicited, from appropriate established or potential small business concerns in a pro rata proportion.

C. In planning procurement, division into reasonably small economically sound production lots, time allowed for the preparation and submission of bids or proposals, delivery schedules, specifications and other provisions shall be determined, consistent with military requirements, in a manner to encourage participation by small business concerns.

D. The opportunity to submit bids for quantities less than the total requirement should be extended to the maximum practical extent.

E. Small business participation shall be increased through a continuing active search for potential small business suppliers.

F. Implementation of this policy with respect to defense subcontracts will be set forth in a separate Department of Defense Instruction to be issued.

V. SPECIFIC POLICIES

A. Small Business Specialists. To the extent to which the following actions have not already been taken:

1. The Assistant Secretary of Defense (Supply and Logistics) will appoint a Small Business Advisor who shall be responsible for counseling the Assistant Secretary of Defense (Supply and Logistics) in matters relating to small business including the establishment, implementation and execution within the Department of Defense of an appropriate Small Business Program. The Small Business Advisor, Assistant Secretary of Defense (Supply and Logistics), shall also be responsible for representing the Assistant Secretary of Defense in negotiations with the Small Business Administration and other agencies of Government in matters relating to small business policy. Negotiation with Government agencies or departments outside the Department of Defense concerning small business policy and programs shall be conducted through the Small Business Advisor (Assistant Secretary of Defense (Supply and Logistics)) or with his authorization.

2. Each military department shall establish an office of Small Business for the department. The chief of this office will also serve as the Advisor on Small Business to the Procurement Secretary. He will be responsible for the development of a Department Small Business Program implementing the Department of Defense Small Business Policy and Program, and for its staff supervision. He or his designee will represent his Department in negotiations with other Departments or Governmental agencies on matters affecting Small Business. The Chiefs of the Offices of Small Business of each Military Department shall devote their efforts exclusively to small business matters.

3. Small Business Specialists shall be appointed in each principal procurement office of the Military Departments and such others as the Department may consider appropriate. They shall be full time or part time as the scope of their assigned duties may require. The senior small business specialist in any procurement office shall be appointed by name and in writing and will report to the appointing authority. Each military department shall designate the appointing authority in such a manner as to insure that the small business specialists appointed will maintain the necessary independence of thought and action in the performance of their functions. Selection of individuals to serve as small business specialists will be the responsibility of the appointing authority. They shall be men of high caliber, preferably civilians, whose experience in or with small business and whose interest in the welfare of the small business community especially qualify them for this work.

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its barriers of prejudice to the joint-determination program, the dollar volume in contracts to small business might, in fact, be increased.

On March 10, 1954, the Department of Defense issued its instruction No. 4100.9, designed to strengthen the joint-determination program.

Number 4100.9
Date: 10 March 1954

DEPARTMENT OF DEFENSE INSTRUCTION

Subject: Relations with Small Business Administration.
Reference: (a) Directive 4100.9, Relations with Small Defense Plants Administration, 10 June 1953.

I. PURPOSE

The purpose of this instruction is to coordinate the existing Department of Defense small business program with certain responsibilities of the Small Business Administration.

II. CANCELLATION

Reference (a) is cancelled.

III. POLICY GOVERNING THE RELATIONS BETWEEN THE DEPARTMENT OF DEFENSE AND THE SMALL BUSINESS ADMINISTRATION

A. The Small Business Administration

Public Law 163, 83rd Congress, first session (approved July 30, 1953) created the "Small Business Administration" (hereinafter referred to as "SBA") and gives the Administration certain powers and responsibilities incident to the placement of Government contracts with small business concerns.

In order to coordinate the existing Department of Defense small business programs with certain responsibilities of the Small Business Administration under the Act, the General Policy and Basic Program covered in the succeeding paragraphs is established.

B. General policy

1. There is hereby reaffirmed the policy of the Department of Defense to obtain for small business concerns the greatest practicable participation in the defense procurement program, both through prime contracting and through encouragement of subcontracting.

2. In carrying out this policy, and the program hereinafter set forth, the primary consideration of the Department of Defense shall be that of securing performance or deliveries at the time, in the quantity, and of the quality required by the defense program, and nothing stated herein shall detract from that consideration. Furthermore, actions taken under this policy shall be consistent with other procurement and military objectives.

3. The contracting office has responsibility for the proper award of contracts and the procedures established hereunder shall be carried out in such manner as not to impair or interfere with the expeditious operation of the procurement process. The SBA representative will have no veto power in the placing or awarding of contracts.

4. It will be the responsibility of the Military Departments to establish operating procedures in conformity with the policy stated herein, and submit such procedures to the Assistant Secretary of Defense (Supply and Logistics) for approval.

5. In furtherance of the purposes of the Act creating SBA, and in the implementation of the program hereinafter set forth, DOD and SBA personnel will consult and cooperate to the maximum extent practicable within contracting offices to which SBA personnel may be assigned, and at other levels, as appropriate.

C. Basic program

1. SBA may assign one or more representatives to the contracting offices of the Military Departments. Such representatives will be known as SBA Representatives.

arise in its operation. In the event there are any difficulties that cannot be resolved by that group, they will be referred to the Assistant Secretary of Defense (Supply and Logistics), and the Administrator of the Small Business Administration.

VI. DEPARTMENTAL IMPLEMENTATION

The Secretaries of the Military Departments shall take action to implement this directive immediately and shall submit revised regulations, procedures and instructions in duplicate to the Assistant Secretary of Defense (Supply and Logistics) within thirty (30) days of the date of this directive.

VII. EFFECTIVE DATE

The revised policy is effective thirty (30) days from date of issuance.

C. E. WILSON,
Secretary of Defense.

The committee feels that the directive constitutes a forward step in behalf of small-business interests by the Department of Defense. The directive acknowledges the Small Business Administration as a partner in the job of strengthening the small-business programs of the military departments.

Your committee has been disappointed by an apparent antagonism which has existed between the armed services and the Small Business Administration. In its military procurement report, dated August 14, 1954, the committee stated:

* * * In the past, the committee has been disturbed to note a feeling of resentment and disdain on the part of these agencies toward the other. Those who work in the SBA and those who work in military procurement have a large area of common interest. There should be a spirit of cooperation prevailing. There are also times when constructive criticism among these agencies is helpful to the small-business program. It is to be hoped that the military and the SBA can continue to cooperate and work together harmoniously toward their common goal—more extensive participation by small business in Government procurement.

A further step was taken to improve the everyday working relations of SBA and the services with the decision to have a Small Business Administration representative assigned to the Department of Defense. This liaison post will carry with it the duty of working with the small-business advisers of the Office of the Secretary of Defense and the military departments.

During the late months of 1953 and early 1954 the Small Business Administration and the Department of Defense sought to establish mutually acceptable methods to implement the joint determination program. It is no secret that there still is strong opposition to this program within the military departments. The committee recognizes that there are those who would eliminate this part of the overall program. This attitude has disturbed the committee greatly. One of the basic arguments used by the opposition is that the same contracts which go to small business under the joint-determination program would have gone to small business without it. In making this statement, the burden of proof rests with those who argue against the program. To date, no one has been able to prove this to the satisfaction of the committee. It has also been pointed out that the total dollar volume of contracts awarded to small business under joint determination is small when compared to the total dollar volume going to small business outside this procedure. Your committee cannot subscribe to this approach. It feels that if the military would break down

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2. The contracting offices, through the senior Small Business Specialists therein or other designated representatives of the chiefs of the contracting offices will afford the SBA representatives assigned to such offices an opportunity to jointly screen all procurements (except for those items classified Confidential or higher and those of an emergency nature), prior to issuance of bids or requests for proposals and advise the Contracting Officer:

a. whether a particular procurement is suitable for performance by small business concerns,

b. the minimum percentage of a particular procurement found suitable under (a) which the contracting office will endeavor to place with small business concerns.

3. While emergency purchases and Classified procurements are excluded from the screening process, the contracting office will inform the SBA representative of the nature of the emergency, and in all cases will continue to secure small business participation when the procurements are suitable for performance by small concerns.

4. In the course of or subsequent to screening, the SBA Representative may initiate action for a joint determination in accordance with criteria set forth in Section 214 of the Act, and the official designated by the contracting office shall promptly (1) concur in the written recommendation of the SBA Representative or (2) disapprove, stating in writing his reasons for disapproval. The SBA Representative will be permitted to appeal any such disapproval, within two full working days to the chief of the contracting office or his designee whose decision shall be final.

5. Such joint determination may apply to all or a percentage of a single procurement. Joint determinations shall be binding on contracting offices, and such procurement or specified percentage thereof must be placed only with small business concerns. Such procurement shall be placed in accordance with detailed operating procedures to be established as provided in paragraph 4 of the General Policy. If, however, in the light of the facts and circumstances existing at the time of the placement of the contract the contracting officer considers that a contract cannot be made with a small business concern without detriment to the Government's interest, (e. g., because of unreasonable price) the contracting officer may request withdrawal of the joint determination. If the SBA Representative does not agree, the matter shall be referred to the chief of the contracting office or his designee, whose decision shall be final, unless the chief or his designee decides to refer the matter to higher authority, in which event the decision of higher authority shall be final. A signed memorandum record of the withdrawal of any joint determination shall be made and retained in the procurement file.

6. Joint determinations shall not be made with respect to general classes of items, but will be limited to individual procurement actions which are expected to involve an expenditure of $10,000 or more.

a. In order to assure that proposed procurements under joint determination receive widespread publicity, such procurements will be synopsized, in accordance with applicable directives, in the Department of Commerce "Synopsis of U. S. Government Proposed Procurement and Contract Awards."

(1) In transmitting procurement information to the Department of Commerce for inclusion in the Daily Synopsis, a separate transmittal will be made on those procurements which are under joint determination, and the transmittal will clearly state that "The Proposed Procurement(s) listed herein is (are) under Joint Determination."

b. Invitations for Bid or Requests for Proposal on procurements selected for joint determination will be made available in sufficient number to provide a minimum of one copy, with all attachments, for each SBA Regional and Branch Office and the SBA Washington Headquarters, except where the SBA representatives believe a smaller number of copies will be adequate. The SBA representative will handle the distribution of the data to their offices.

7. Procurements under a 100% joint determination as described in paragraphs 4, 5, and 6 above may be entered into by means of negotiation or by a method to be known as "Small Business Restricted Advertising." Small business restricted advertising, including awards thereunder, will be conducted in the same way as prescribed for formal advertising under Section II, Armed Services Procurement Regulation, except that bids and awards will be restricted to small business concerns and the contract shall be awarded pursuant to the authority of Section 214 of Public Law 163. Where negotiation under Section 2 (c) of the Armed

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Services Procurement Act is the method of procurement, competition and widespread publicity will be used to the fullest extent practicable and due consideration shall be given to placing procurements, without detriment to the Government, with qualified small concerns in need of business as against small concerns having ample work load.

a. Each invitation for bid issued in connection with a proposed procurement which has been ear-marked for small business concerns will contain substantially the following clause:

NOTICE TO PROSPECTIVE BIDDERS

The Small Business Administration and the Contracting Officer have jointly determined, in accordance with the criteria set forth in Section 214 of Public Law 163 to award this procurement to a small business concern. Therefore, bids under this procurement are restricted to small business concerns, and awards will be made to the small business concern submitting the lowest responsible bid conforming to the invitation, price and other factors considered. (The Department of Defense defines small business as any concern which, including its affiliates, employs in the aggregate, fewer than five hundred employees.) The right is reserved to reject any bid when it is in the interest of the Government to do so. Bids received from firms not classified as small business will be considered as nonresponsive.

8. When a joint determination for a stated percentage of less than 100% is entered into in conjunction with formal advertising conducted pursuant to Section 3 of the Armed Services Procurement Act, the percentage under joint determination will be negotiated. In situations in which such a stated percentage is so used, the following procedure will be utilized:

a. Determine the optimum quantity which, because of manufacturing processes, would probably yield the most favorable price and issue invitations for bid under the advertised portion for that quantity only, holding back the remainder under joint determination for future placement by negotiation with small business concerns.

b. Upon receipt of formal bids, undertake to negotiate with small business firms the percentage held back under joint determination:

(1) At a price equivalent to the lowest qualified bid received under the invitation for bids, when the award(s) is (are) for a single price.

(2) At a price determined by the Contracting Officer to be fair and reasonable but in no event at a price higher than the highest price of an award made under the invitation for bids when the award(s) is (are) at multiple prices. In the absence of changes in market trends and other factors requiring consideration, the Contracting Officer shall use for such fair and reasonable price the weighted average. The weighted average shall be ascertained by adding the total dollar amounts of all awards, then dividing such grand total by the total number of units included in all awards.

9. The policies herein prescribed do not in any way alter the present method of awarding contracts by formal advertising. Therefore, if formal advertising is determined by the contracting officer to be the appropriate method to utilize for a particular procurement, invitations for bid will be issued and awards made in precise accord with the provisions of ASPR, Section II, and the respective departmental procedures pertaining to formal advertising. In the implementation of the policies stated herein, contracting officers are cautioned not to engage in the practice of inviting bids for formally advertised procurement and then rejecting all bids and resorting to negotiation; for, in so doing, bidders would quickly lose confidence in the competitive bid system. Special care will be exercised to the end that small business concerns whose names appear on the appropriate bidders' lists will receive an opportunity to participate.

10. Contracting Officers will provide SBA Representatives an opportunity to recommend, within a reasonable period of time, appropriate numbers of small business concerns for inclusion in the list of bidders or firms to be solicited with respect to any procurement found suitable for performance by small business concerns.

11. The Small Business Administration has the authority to certify the competence of any small business concern as to capacity and credit. Prior to making certifications, SBA will obtain and consider such technical and financial informa-

tion concerning any firm as may be available from the purchasing activity. Certifications as to financial competency reflect the judgment of SBA that the Government will not be taking an unreasonable risk of an unsatisfied judgment in the event of default, although it is not implied that all possible future claims by the Government will be fully satisfied. Contracting officers will accept certificates of competency from SBA as conclusive without requiring the meeting of any other requirement with respect to capacity or credit. However, in case of grave doubt on the part of the contracting officer as to the firm's ability to perform, he shall refer the case, with all pertinent available information and an indication as to degree of urgency, to higher echelons for review prior to award.

12. SBA is empowered by the Act to determine the concerns which are to be designated "Small Business Concerns" for the purposes of the Act. Such determinations, when made, shall be accepted by the Department of Defense; nevertheless, in the absence of such determination, the Department of Defense will observe its definition of small business concerns as "any concern which, including its affiliates, employs in the aggregate fewer than 500 persons."

13. In any case in which the Small Business Administration certifies, in accordance with Section 208 that the Administration is competent to perform any specific Government contract, such certification shall be made by the Administrator to the Procurement Secretary of the Military Department concerned.

14. All matters of basic policy relating to prime contracting or subcontracting with small business concerns will be dealt with for the Department of Defense by the Assistant Secretary of Defense (Supply and Logistics). Disagreements in matters of procedure or basic intent of this instruction which cannot be settled between the Military Department and SBA will be referred to the Assistant Secretary of Defense (Supply and Logistics) for resolution as to the position of the Department of Defense.

IV. DEPARTMENTAL IMPLEMENTATION

The Secretaries of the Military Departments shall take action to implement this instruction immediately and shall submit revised regulations, procedures and instructions in duplicate to the Assistant Secretary of Defense (Supply and Logistics) within thirty (30) days of the date of this instruction.

V. EFFECTIVE DATE

The revised policy is effective immediately.

C. S. THOMAS,
Assistant Secretary of Defense
(Supply and Logistics)

Your committee hopes that both the Department of Defense and the Small Business Administration will make a concerted effort to see that the directive is clearly understood by all personnel involved in the making of joint determinations.

It is apparent that at the Defense Department level there is an awareness of the importance of a vital small-business program in order to realize the goal of preserving small-business participation in military purchasing. It should also be recognized that a constant vigil must be maintained so that the gains already won will not be dissipated.

2. Department of the Air Force

Your committee watched with keen interest two developments within the Air Force procurement program which should have a direct effect upon the future success of the small-business program.

Of major importance was the emphasis placed on subcontracting. The Air Force states that approximately 90 percent of its budget for procurement of air weapons and related equipment must be placed with large concerns. This means that the small firms must look to the large Air Force prime contractors for work originating with the Air Force.

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During 1954, an Air Force advisory group on small business was appointed in an effort to strengthen the subcontracting program. Meetings of prime contractors with Air Force officials were held in Los Angeles, Chicago, and New York. Now under development is a recurring reporting system which is designed to place additional stress on the subcontracting activities of the prime contractors. Your committee will carefully observe the Air Force's search for methods of improving its subcontracting program.

The second development is the increased amount of contracts for maintenance of equipment going to commercial firms. It has been estimated that in fiscal year 1955 the dollar volume of such maintenance and overhaul contracts will amount to approximately $500 million. This practice, if followed, would offer to commercial enterprise a substantial business potential.

In reviewing the statistics for fiscal year 1954, the committee finds that the Air Force awarded 9.8 percent of its prime contracts in continental United States to small-business firms. It is interesting to note that this compares with a figure of 4.5 percent for the years during World War II and 6.2 percent for the years involved in the Korean conflict.

The Air Force analysis shows that 12.9 percent of the total Air Force procurement for fiscal 1954 was within the small-business potential category, which was discussed previously in this section of the report. The small-business potential amounted to $733 million out of a total of $5,693,683,000. The committee finds that of the $733 million considered as the small-business potential, the Air Force actually awarded 76 percent, or approximately $556 million, to small firms. This is an increase of 3 percent over fiscal 1953 and an increase of 21 percent over fiscal 1952.

Your committee has always been interested in the reasons why small firms are not awarded 100 percent of the contracts in the small-business potential area. The following reasons have been submitted:

(*a*) Prices out of line.
(*b*) Maintaining and broadening mobilization base took precedence in final decision to award contract.
(*c*) No bids received from small firms.
(*d*) Small firms technically unqualified.
(*e*) Qualified product where no small business has product approved.
(*f*) Bids did not meet specifications.
(*g*) Proprietary item involved.
(*h*) Emergency nature of procurement precluded small business.
(*i*) Miscellaneous reasons not itemized.

The committee has found a sincere interest and desire on the part of the Air Force personnel to make the small-business program a more effective segment of the general Air Force procurement system.

The following charts give a more complete picture of what has been done during 1954 to carry out the aims of the small-business program.

Air Force Small Business Program

Prime contracts awarded by the U. S. Air Force (in continental United States)

	Awards to business concerns of all sizes		Awards to small business concerns	
	Amount	Percent	Amount	Percent
World War II, calendar years 1943, 1944, 1945	$26,736,000,000	100	$1,198,000,000	4.5
Korean conflict, fiscal years 1951, 1952, 1953	34,831,000,000	100	2,164,000,000	6.2
Since Korea, 1st 12 months fiscal year 1954	5,693,683,000	100	556,715,000	9.8

NOTE.—All figures are net after allowing for credits.

Prepared by: Office of Small Business Headquarters, USAF.

Net purchases by Air Force from industry in continental United States, fiscal year 1954

	Total		Small-business potential			Small-business awards		
	Number of actions	Dollar amount	Number of actions	Dollar amount	Percent of total	Number of awards	Dollar amount	Percent of potential
1st quarter	172,067	$1,686,389,000	171,468	$106,722,000	6.3	135,336	$85,360,000	80
2d quarter	192,878	528,159,000	192,249	92,826,000	17.5	149,317	69,841,000	75
3d quarter	217,399	859,008,000	216,511	196,222,000	22.8	168,653	142,261,000	73
4th quarter	251,031	2,620,127,000	248,747	337,316,000	12.4	195,006	259,253,000	77
Total	833,375	5,693,683,000	828,975	733,086,000	12.9	648,312	556,715,000	76

NOTE.—The small-business potential is the total dollar value of procurements of items or services considered suitable for production or performance by small business concerns.

Prepared by Office of Small Business Headquarters, USAF.

New procurement—Purchases by Air Force from industry in continental United States, fiscal year 1954

	Total dollar amount	Small-business potential		Small-business awards	
		Dollar amount	Percent of total	Dollar amount	Percent of potential
1st quarter	$1,878,859,000	$108,682,000	5.8	$87,264,000	80
2d quarter	825,528,000	97,781,000	11.9	75,020,000	77
3d quarter	1,226,921,000	200,456,000	16.7	146,445,000	73
4th quarter	3,146,168,000	341,236,000	10.8	263,052,000	77
Total	7,077,476,000	748,155,000	10.7	571,781,000	76

NOTE.—The small-business potential is the total dollar value of procurements of items or services considered suitable for production or performance by small-business concerns.

Prepared by Office of Small Business Headquarters, USAF.

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Air Force purchases (net) from industry in continental United States, fiscal years 1952, 1953, and 1954

	Total procurements from industry	Small-business potential	Percent of total	Small-business awards (prime contracts)	Percent of total	Percent of potential
Fiscal year 1954	$5,693,683,000	$733,086,000	12.9	$556,715,000	9.8	76
Fiscal year 1953	14,210,598,000	837,156,000	5.9	608,778,000	4.3	73
Fiscal year 1952	11,928,495,000	1,263,701,000	10.5	695,091,000	5.8	55

BREAKDOWN OF THE ABOVE FISCAL 1954 FIGURES

	Small-business potential	Small-business awards (prime contracts)	Percent of potential
5,614 procurements over $10,000 in value	$523,651,000	$425,217,000	81
823,960 purchase orders under $10,000 in value [1]	209,435,000	131,498,000	63
Total	733,086,000	556,715,000	76

[1] All procurements under $10,000 in estimated value are arbitrarily listed in the small-business potential (extensive tests indicate that ⅓ of this amount should not be so listed).

Prepared by Office of Small Business, Headquarters, USAF.

3. Department of the Army

The Department of the Army has assigned 119 small-business specialists to key posts at the principal Army procurement centers within the United States. These people are charged with the major share of responsibility in maintaining and improving the Army small-business program.

During fiscal 1954 the Army stated that it had a total obligated procurement of $4,560,176,000. Out of that total, small-business firms were awarded 35.1 percent of the contracts, or a dollar volume of $1,600,472,000.

In terms of small-business potential, the Army determined that 51.2 percent of its total obligated procurement came within that potential area. Further investigation shows that the Army actually awarded to small firms 68.6 percent of the contracts considered to be within the area of small-business potential.

The Department of the Army has not presented any current figures concerning the dollar volume of subcontracts going to small firms from the Army prime contractors. A spot-check survey conducted less than a year ago indicated that Army prime contractors placed 29.3 percent of their work with smaller firms. This survey included only first-tier subcontracts. The committee feels that every effort should be made by the Army to emphasize the importance of subcontracting to the prime contractors. It is also hoped that some more extensive reporting system can be worked out which will reveal more accurate figures concerning the actual subcontracting work placed by Army prime contractors.

The following charts present the statistical results of the Army's procurement program as it affects small-business concerns:

4. Department of the Navy

The Navy has designated small-business specialists and industry cooperation officers in each major Navy purchasing activity to carry the operating responsibility of its small-business program.

The Department of the Navy for some time felt the need to consolidate the statements and oral agreements relating to its small-business program. During 1954, a clarifying directive was issued which covered the following areas:

(*a*) General policy for the assistance of small business.
(*b*) Navy small-business specialists.
(*c*) Participation of small business in the production allocation program.
(*d*) Synopses and distribution of procurement information.
(*e*) Small-business production pools.
(*f*) Relations with the Small Business Administration.

The directive for the first time carries the provision that the Navy shall notify the Small Business Administration whenever a small firm is low bidder and yet is not considered qualified by the Navy to perform the contract. This will give the Small Business Administration an opportunity to investigate the desirability of issuing a certificate of competency. The Navy has also agreed to provide the regional offices of the Small Business Administration with reproducible copies of blueprints so that these prints may be more widely and quickly distributed.

The latest statistics released by the Navy on the participation of small business in Navy procurement are based on the calendar year 1954. In considering "new" procurement for the calendar year, the Navy awarded 13.6 percent of its dollar volume in prime contracts to small firms. For those items listed within the small-business potential, small firms received 74 percent of the Navy awards.

A further analysis shows that in the category of "net" procurement, small business received 16.5 percent of Navy prime contracts and 71.8 percent of the small-business potential.

The following figures and charts on Navy procurement for calendar year 1954 reveal the extent of participation by small firms in Navy procurement:

Navy procurement, calendar year 1954

	Net value	New value
Total direct purchases within United States	$4,450,617,000	$5,651,014,000
Small business potential	$1,024,774,000	$1,041,296,000
Placed with small business	$735,635,000	$770,988,000
Percent of total	16.5	13.6
Percent of small business potential	71.8	74.0

Department of the Army—Obligated procurement[1] (July 1, 1953–June 30, 1954), fiscal year 1954

	Percentage	Dollars
I. TOTAL OBLIGATED PROCUREMENT (a)	100 percent	4, 560, 176, 000
A. Formally advertised (b)	26 percent of (a)	1, 185, 792, 000
1. Portion suitable for small business (c)	80 percent of (b)	948, 926, 000
2. Portion awarded to small business (d)	74.3 percent of (c)	704. 814, 000
	59.4 percent of (b)	
B. Negotiated (e)	74 percent of (a)	3, 374, 384, 000
1. Portion suitable for small business (f)	41 percent of (e)	1, 385, 012, 000
2. Portion awarded to small business (g)	64.7 percent of (f)	895, 658, 000
	26.5 percent of (e)	

	Percentage	Number
II. TOTAL NUMBER OF ACTIONS (h)	100 percent	1, 330, 399
A. Formally advertised (i)	7.1 percent of (h)	95, 175
1. Portion suitable for small business (j)	97.8 percent of (i)	93, 118
2. Portion awarded to small business (k)	85.4 percent of (j)	79, 551
	83.6 percent of (i)	
B. Negotiated (l)	92.9 percent of (h)	1, 235, 224
1. Portion suitable for small business (m)	99.4 percent of (l)	1, 228, 116
2. Portion awarded to small business (n)	76.5 percent of (m)	938, 797
	76.0 percent of (l)	

[1] New procurement only. Does not include interdepartmental or interservice procurement.

III. PROCUREMENT BY MAJOR PROCURING ACTIVITY

Activity	Total procured	Suitable small business	Awarded small business	Percent of suitable (3) not awarded to small business
(1)	(2)	(3)	(4)	(5)
Ordnance	$1, 952, 684, 000	$293, 129, 000	$206, 942, 000	29. 4
Quartermaster	982, 378, 000	909, 688, 000	559, 515, 000	38. 5
Engineers	825, 401, 000	683, 681, 000	504, 558, 000	26. 2
Signal Corps	293, 394, 000	95, 904, 000	56, 746, 000	40. 8
Medical	63, 702, 000	35, 683, 000	23, 679, 000	33. 6
Transportation	80, 010, 000	69, 809, 000	59, 626, 000	14. 6
Chemical	51, 901, 000	34, 973, 000	23, 517, 000	32. 8
All other	310, 706, 000	211, 071, 000	165, 889, 000	21. 4

IV. TOTAL SUITABLE AND AWARDED PROCUREMENT TO SMALL BUSINESS

	Percentage	Dollars
A. Total obligated procurement (a)	100 percent	4, 560, 176, 000
B. Total suitable for small business (b)	51.2 percent of (a)	2, 333, 938, 000
C. Total awarded to small business (c)	35.1 percent of (a)	1, 600, 472, 000

V. ESTIMATED FIRST TIER SUBCONTRACT PROCUREMENT TO SMALL BUSINESS

(Percentage arrived at by examination at random a number of prime contracts from the technical services. This survey was conducted less than a year ago)

A. Prime contracts awarded to large business	$2, 959, 704, 000
B. First tier subcontracts let by large business to small business	866, 433, 440

VI. TOTAL SMALL BUSINESS PARTICIPATION, FISCAL YEAR 1954

A. Total Department of the Army obligated procurement [1]	$4, 560, 176, 000	
1. Prime contracts screened suitable for small business (51.2 percent of A)	2, 333, 938, 000	
2. Prime contracts awarded to small business (35.1 percent of A or 68.6 percent of 1)		$1, 600, 472, 000
3. Prime contracts screened as suitable for small business but not awarded to small business (16.1 percent of A or 31.4 percent of 1)	$733, 466, 000	
4. Prime contracts awarded to large business (64.9 percent of A)	2, 959, 704, 000	
5. First tier subcontracts placed by large business with small business firms (19 percent of A) (29.3 percent of 4)		866, 433, 440
54.1 percent participation by small business firms (prime contracts plus estimated first tier subcontracts)		2, 466, 905, 440

[1] New procurement only. Does not include interdepartmental or interservice procurement.

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Section E. Procurement of Tugboats by the Navy

CHRONOLOGY

A specific case study in military procurement to which your committee directed its attention during 1954 concerned the purchase of steel harbor tugs by the Navy on the requisition of the Army and the Air Force.

In many ways, this investigation revealed an almost unbelievable amount of confusion on the part of all three armed services and the private contractors involved, with the bulk of the resultant damage falling upon the small shipbuilders who assumed the burden of building the vessels.

After an extensive staff investigation, the Military Procurement Subcommittee, under the chairmanship of Senator Homer Ferguson, held public hearings on May 19 and 20, 1954, to receive testimony from representatives of the Military Establishment, the shipyards, and the design agent. Senators Leverett Saltonstall, James H. Duff, Russell B. Long, George A. Smathers, and Guy M. Gillette were also members of the subcommittee during the consideration of the tugboat matter.

A report entitled "Navy Procurement of Tugboats" (S. Rept. 2506, 83d Cong.) was filed on August 24, 1954, by the full committee after approval of the recommendations of its Military Procurement Subcommittee.

BACKGROUND INFORMATION

Soon after the outbreak of the Korean war, the Army and the Air Force determined that they needed, as soon as possible, several types of steel harbor tugs for use in their operations at foreign bases and in the United States. Since these vessels had been assigned for single-agency, or centralized procurement to the Department of the Navy by the Munitions Board, the Army and the Air Force requisitioned them from the Navy's Bureau of Ships. In total, the Army and the Air Force called for a total of 98 65-foot tugs as well as numbers of 45- and 100-foot tugs. Your committee's survey focused on the 65-foot boats.

In theory, the idea of centralizing responsibility for procuring specific types of military goods in one agency is most logical, since it would seem to involve the utilization of skills, training, and practical experience brought together in one part of the Government, rather than spreading such special aptitudes thinly throughout the various arms of the military. Your committee found in the case of this specific procurement, however, that the practice roamed far from the theory and the centralized procuring agency did little more than add one more increment of Government and several more echelons of decision-making, delays, and confusion. Furthermore, your committee could only conclude that the special skills and tools which should have been present in the Navy's Bureau of Ships were either absent or not utilized.

As merely one example, the committee learned that the contracting officer of the Bureau responsible for this procurement had never before purchased this type of tugboat. Nonetheless, he did not call upon the designing, engineering, or cost-analysis sections of his Bureau be-

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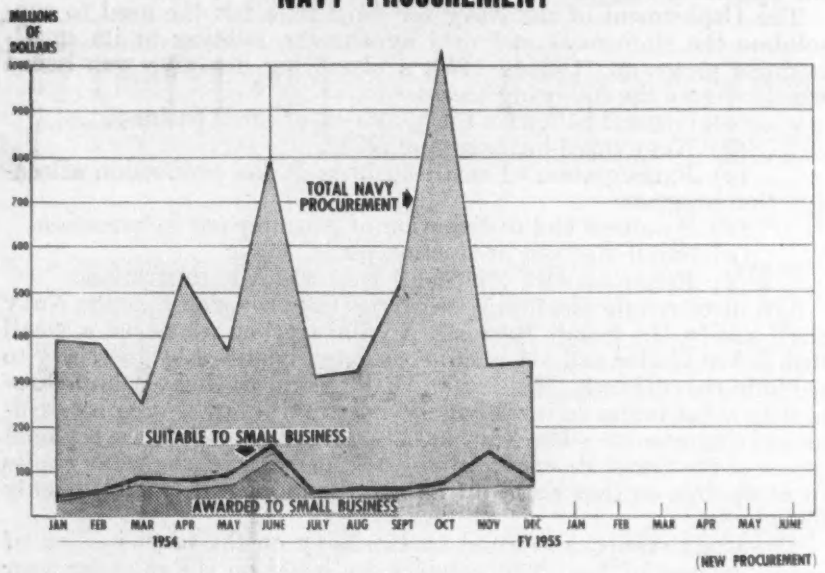
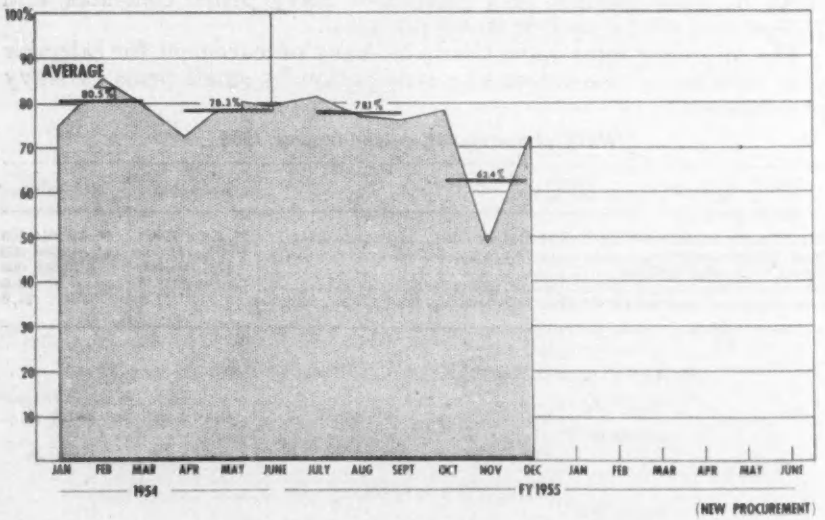
NAVY PROCUREMENT



PERCENT WHICH SMALL BUSINESS SECURED OF TOTAL DOLLARS SUITABLE



contracts were financially or technically incompetent to perform satisfactorily. With centralized procurement, the Bureau of Ships certainly should have been able to weed out such unqualified bidders before letting the contracts. On the other hand, it appears possible that these yards, most of which had built such vessels in the past, became incompetent only after experiencing all the delays and frustrations which arose in the program.

FINDINGS AND CONCLUSIONS

In Senate Report 2506 (83d Cong., 2d sess., p. 22), your committee prologed its findings and conclusions as follows:

> From all of the information gathered at the public hearings and from all the data collected, your committee is convinced that this tugboat procurement has been poorly handled by all parties. At least five small shipyards have been seriously handicapped because they accepted defense work from the Government. Furthermore, the national interest itself could have been threatened had the Korean war developed into a full-fledged world war.
>
> The procurement of these tugs appears to be an almost classic example of the wasteful and time-consuming costs of a crash mobilization basis of operation. Sufficient advance planning either was not undertaken or not completed at the time these contracts were let. Starting under emergency conditions with all signals set for "full speed ahead," the Navy's activities in procuring these harbor tugs later slowed down to almost a complete halt. This single procurement illustrates a great many of the difficulties and mistakes which are certain to arise under the pressure of a quick, emergency buildup of our national strength, such as took place immediately after the start of the Korean war. The committee hopes it will be reviewed by mobilization planners in the military services and in all branches of Government as a good example of how to mobilize.
>
> Your committee is well aware that the difficulties encountered by the Navy in procuring tugs from small shipyards might tend to make their contracting officers shy away from putting further work in such yards. This committee strongly dissents from any such general conclusion and reiterates its position, taken at all times during the past 4 years, that the mobilization base must be broad enough to protect our productive capabilities in case of all-out war and in order to minimize the impact of any emergency situation on small-business firms.

(*a*) *The Navy*

In respect to the operations of the Navy in this procurement, your committee summarizes its role as follows:

(i) The contracting officers of the Navy seemed far more anxious to obtain the lowest possible price rather than a fair price which might have assured delivery of the tugs.

(ii) The Navy did not conduct full preaward surveys of the yards or utilize all of the survey that it did make.

(iii) The Army had spent some $300,000 in building an experimental vessel which might have served as a pattern for these tugs. No use was made of that work in this procurement and the money must be regarded as having been wasted.

(iv) The Navy should have designated 1 of the 5 yards as the "lead yard" and made its first vessel the prototype, so that other builders could have followed fixed patterns which would have brought faster production and lower cost per vessel.

(v) The Chief of the Bureau of Ships should have frozen the design at some point to avoid the chaos which developed from the hundreds of changes.

(vi) While some of the regional supervisors of shipbuilding proved helpful to the builders under their control, others seem

fore or while working on this purchase. Rather, he proceeded under the assumption that the lowest bids received from the shipyards in response to the Bureau's invitation were "within range," but could and should be brought lower by individual negotiations with those low bidders. All five of the yards receiving contracts for construction of these tugs testified that they had been told that there were lower bidders, but if they would reduce their prices they would be in a position to receive a share of the business. Since all of the yards were under the necessity of receiving Government contracts or ceasing operations, it was not unnatural that all of them bid extremely low and, as subsequently proved, took contracts at too low a price. Of the original 5 shipbuilders who received these contracts, 3 are now bankrupt and out of operation, while the other 2 have told your committee that they survive only because they had outside resources to cover the losses incurred in this operation.

Your committee plans further case studies of policies and practices under single-agency procurements to determine if this case was exceptional or whether it falls into a pattern.

The testimony of the builders and others connected with the procurement showed clearly that indefinite lines of responsibility and the overlapping authority of several branches of the Government increased immeasurably their difficulties and contributed a great deal to the delays which eventually brought the entire program to a virtual standstill. The task of producing detailed working plans was delegated by the Navy to a private design agent who was also to serve as central procurement agent for the several builders for the machinery and equipment to be used on the tugs. In this case, the task of gathering a staff to work on their contracts delayed the output of detailed plans, but even more delays came when those plans had to run the gamut of bureaucracy to gain the approvals necessary before they were official and could be used by the builders. Intervals of up to 6 months were reported to the subcommittee as indications of the lags which became common as each of the hundreds of plans and changes of plans went from the design agent to the Bureau of Ships' representative in New York, to the Army, the Air Force, the Coast Guard, and the American Bureau of Shipping.

Furthermore, most of the agencies cited above also had the right to initiate changes in the plans which would call for a further round of approvals. The chief instigators of these, however, were the requisitioning agencies, the Army and the Air Force, which made numerous amendments to the original plans which resulted in prolonged delays, but which, your committee concluded, brought little or no total improvement in the final product. Remembering that this was called an "emergency procurement" and that the tugs were supposed to have been vitally needed in operational theaters, your committee was unable to understand why someone did not freeze the design early in the game and prohibit the hundreds of changes which contributed so much to the almost unbelievable fact that only 24 of the 99 tugs had been delivered at the time of the subcommittee hearings, even though all 99 had been scheduled to be in operation 12 months earlier.

Another evidence of shortcomings in the letting and administration of these contracts arose when the Navy's representatives before the subcommittee testified that 1 or more of the 5 yards awarded

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design agent, and the inspecting services which will be given the responsibility and authority to make changes on the spot without referral through ordinary chains of command. Your committee is convinced that this will not only save large amounts of money in the future, but will also cut the time required for completing the program. Naturally, after the prototype vessel is finished and the finalized working plans are drawn from the finished ship, there should be no further changes made without the most imperative reasons.

5. Regional supervisors of shipbuilding should operate to assist the builders under their jurisdiction insofar as compatible with their responsibilities to the Navy and the Government.

6. The maximum possible amount of responsibility for adjudicating claims and making settlements should be delegated to the various supervisors of shipbuilding. The Navy should then satisfy itself that these officers are following the coordinated instructions of the Chief of the Bureau of Ships.

7. At all times, the Navy and the other requiring services should have available detailed plans for such common vessels as these tugs. Unless there is some major technological advance, there should be on file and ready for any emergency procurement, complete plans for small craft and commercial-type vessels.

8. A study should be made to determine if the responsibility for procuring such commercial-type ships as tugs or towboats should not be delegated to the Maritime Administration which has more facilities for designing, drawing working plans, and standardizing for that type of vessel than does the Navy, the Army, or the Air Force.

9. Congress must take additional steps to cure the long-ingrained habit on the part of the armed services to commit all their funds on June 30 of each year, no matter how precipitously or how irrationally the last-week-of-the-fiscal-year award is made.

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only to have hindered those who should have been able to look to them for assistance and guidance.

(vii) The Navy apparently resorted to hasty and hurried obligation of its funds during the last few days of the fiscal year.

(viii) Centralized procurement was not effective in this case.

(ix) Standardized designs and working plans should have been ready for such relatively simple and commercial-type vessels as this 65-foot tug. So far as your committee can determine, there are still no such plans ready for any future emergency.

(x) The costs of these vessels far outstripped original estimates, even though no commensurate improvements are apparent.

(*b*) *The design agent*

The committee made the following observations about the work of the design and central-procurement agent:

(i) It is likely that a design and central-procurement agent is necessary in procurements involving several small shipbuilders.

(ii) The tardiness of the design agent in producing working plans contributed to the cost of the program and the problems of the builders.

(iii) The decision of the design agent to change the propulsion machinery in these tugs contributed materially to the problems of the program.

(iv) Long delays were experienced by yards requesting correction or clarification of the working plans.

(v) The Navy's procedure in awarding the contract to the design agent appeared most informal and "off-hand."

(vi) The committee questioned the necessity for awarding cost-plus-fixed-fee contracts to design agents while insisting on fixed-price contracts to the builders.

(*c*) *The shipbuilders*

Concerning the shipbuilders themselves, the committee concludes:

(i) One or more of the five shipyards awarded these contracts were financially or managerially incompetent to handle their commitments.

(ii) All five yards took these contracts at too low a price.

(iii) Without question, some of the delays in the program can be attributed to questionable managerial or production techniques.

RECOMMENDATIONS

In conclusion, the committee made the following recommendations in Senate Report 2506:

Based upon its findings in this study of the Navy procurement of tugboats, your committee makes the following recommendations, which are believed to be relevant to all Government purchases of smaller vessels:

1. The Government has a responsibility to be frank and open with all bidders, and to give them all pertinent information on the procurement.

2. The contracting officer should utilize the services of the experts in the Navy to determine reasonable prices, terms, and delivery schedules.

3. Preaward surveys must be rigorous enough to eliminate the possibility of giving contracts to yards unable to handle the work without being so rigid as to rule out small yards from military construction awards.

4. When a relatively large number of vessels are to be built by several yards, the Navy should designate one of the yards as the "lead yard," and send to that yard a team consisting of personnel from the Navy, the requiring service, the

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CHAPTER III

THE 1954 TAX LAW AND SMALL BUSINESS

The most important basic problem of all businessmen, large or small, is still the impact of high Federal tax rates. Unfortunately, as long as billions of dollars are required for defending the United States and the free world, there will be no real relief from the burden of high taxes upon individuals and upon businesses. Your committee has felt, however, that the needed revenues could be raised with less danger to our free-enterprise economy and with fewer sources of irritation. Several important steps in this direction were taken in the Revenue Act of 1954.

In mid-1953, your committee summarized the results of its year-long investigation into small-business tax problems and released testimony received in public hearings held by the Tax Subcommittee in all sections of the United States.[1] Four of the five recommendations made unanimously by the committee at that time have been adopted, either in whole or in part: (1) The excess profits tax, which posed such a threat to the large community of small and growing businesses, expired on January 1, 1954; (2) more reasonable and liberalized depreciation policies were adopted in the Revenue Act of 1954; (3) section 102 of the Internal Revenue Code which deals with accumulation of corporate profits was redefined and the burden of proof as to "reasonableness" was transferred from the corporation to the Bureau of Internal Revenue; and (4) a start was made in removing death and the anticipation of death as an inducement to forced sales or mergers with competitors resulting in less competition within an industry.

Of those four changes in the Federal tax system, the end of the excess-profits tax was certainly the most significant in point of dollars and impact upon business firms. Your committee trusts that alternate forms of taxes are developed for any future emergency, since all authorities on taxation agree that it has proved to be an inequitable levy which poses a threat to small- and medium-sized businesses which is out of proportion to the revenue it raises from those firms. A higher exemption would be helpful to the extent that more firms would fall outside its coverage, but that would be a partial improvement at best. Furthermore, your committee feels that the indirect aims of the excess-profits tax could be better attacked by other means. The effects of the post-Korean excess-profits levy are now showing up, indirectly at least, in the mergers of companies which were unable to husband profits during prosperous years to tide them over slack periods, or which were unable to retain sufficient capital from those years to allow them to meet the competition of other firms which enjoyed higher base-period credits or which have access to the capital

[1] Tax Problems of Small Business, Senate Small Business Committee, S. Rept. 442, 83d Cong., 1st sess.

market to install new equipment and utilize advanced and costly methods of production.

The move to end doubts about section 102 of the code has little direct effect upon many companies, but it does remove, to a large extent, the doubts of businessmen about their ability to accumulate surplus capital for meeting future needs or emergencies. Furthermore, its importance may also arise from the fact that it shows that the Government recognizes the problems faced by businessmen in making managerial decisions.

In much the same way, the new policies on depreciation allowances inaugurated by the Revenue Act of 1954 allow businesses to apply the declining-balance method of depreciation on buildings and equipment acquired in 1954 or in later years. This new calculation permits depreciating property at double the traditional straight-line rate and will mean that items can be written off up to two-thirds of their value in one-half their service life. It is likely that some companies will not choose to utilize this declining-balance system, but for new and growing businesses, it will provide more rapid writeoffs and lower taxes in those early years of business life when every dollar of working capital is so often crucial to survival and growth.

Finally, your committee also recommended in its 1953 report that revisions in the code and changes in administration might alleviate some of the problems inherent in the levying and collecting of death taxes. The 1954 Revenue Act provided for the redemption of corporate stock to pay death taxes. While some provision of this sort had been available in earlier years, the allowance was broadened to give many more cases the protection of redeeming corporate stock on a tax-free basis. It is still too early to assess the beneficial effect of this change, but your committee feels that it is a step in the proper direction.

The Revenue Act of 1954 also contained six other amendments to the Internal Revenue Code which are important to the small-business community and which make more equitable the impact of Federal taxes upon all businesses. The first of these changes deals with research and development programs which are becoming ever more important to all businessmen. Few large corporations had been questioned on their deductions for these expenditures, but, prior to the new law, those smaller companies which did not have a regular research budget were often in doubt whether they would be able to classify these outlays as current expense. Now such firms are given the right either to deduct research and experimental costs as current expenses or to amortize them over a 5-year period. This should clear up a "twilight area" and give an impetus to programs of research on the part of smaller companies.

A second revision also was called for by a large number of the witnesses who appeared before the tax subcommittee of your committee. It allows a 2-year carryback of business losses, rather than the previous 1-year period. With the 5-year carry-forward allowance, a business has an opportunity to even out its spotty earnings record which is so typical of smaller, single-product operations. The addition of another year of carryback also grants tax relief to firms when they are in trouble and need it most.

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Among the more controversial provisions of the 1954 act was that dealing with the double taxation of dividends. Your committee has long felt that measures should be adopted which would increase the attractiveness of corporate securities of smaller companies and give such firms easier access to capital markets. There is a difference of opinion whether the section of the 1954 act which grants a credit on individual tax bills for a share of dividends received is the best approach to this problem. The tax subcommittee of your committee will assess the results of the present law and compare those changes with the benefits which might be expected under other means of dealing with double taxation of dividends.

The fourth change falling into this category concerns changes in the capital structure of a business. Previously, small corporations had found themselves entangled in great masses of technicalities when they desired to recapitalize either to bring in new owners and managers or to secure new financing. The law has now been amended to facilitate such changes which will allow more flexibility and reduce some of the pressure toward selling out.

Another revision which has long been sought by this committee and many small businesses has been the privilege for some partnerships to be treated as corporations for tax purposes. Primarily, the new section of the code will allow partnerships which require large capital investments to plow back profits for capital expenditures and to be taxed at the corporate rate rather than the personal-income level which applies to partnerships.

The last of the 10 major changes in the tax laws during 1954 which assist small-business firms deals with the technical matter of partnerships in general and their operations. In the past, those businesses organized as partnerships were often hindered by questions pertaining to the tax status of some of their transactions. Since the sections of the code dealing with partnerships grew up over a long period of years and followed no consistent pattern, the 1954 act should materially assist all such concerns, whether or not it saves them any tax dollars.

Because of the need for revenue and the dollar loss involved, Congress did not approve the fifth recommendation of the Small Business Committee tax report which stated that—

> at the earliest possible date, the exemption from the surtax rate on corporate income should be lifted from the present $25,000 to $50,000 or $100,000.[3]

Once again this year, Congress will have an opportunity to judge whether it is possible to make such an investment in the vigor of small businesses, since President Eisenhower has stated that he will ask for an extension of the present surtax rates on corporate earnings. Your committee earnestly hopes that the income and expenditure estimates for the fiscal year of 1956 will allow a rise in the exemption to the $50,000 or $100,000 figure.

The small businesses of the Nation are looking for a continuation of the efforts which were made last year in making the Federal tax laws more equitable for all segments of the economy. Your committee will continue to serve as a forum for the expression of ideas on how this important task can be expedited. The increase in the surtax exemption is only one of the many changes which will be studied.

[3] Ibid., p. 28.

Another will be an amendment to the Internal Revenue Code allowing certain small businesses organized as corporations to be treated as partnerships for tax purposes. This provision was contained in last year's tax bill as it passed the Senate, but it was eliminated in conference.

In approaching this problem, your committee will not promote changes which will give unfair advantages to small business. Rather, it will seek to make more equitable the Federal tax system which in too many respects, consciously or unconsciously, still places a greater proportionate burden on the smaller units of business which are least able to withstand such an impact.

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CHAPTER IV

COMPETITION IN THE AMERICAN ECONOMY DURING 1954

SECTION A. THE ROLE OF THE DEPARTMENT OF JUSTICE

The Federal antitrust laws perform an important function in maintaining the position of the small-business community in the economy of the United States. Accordingly your committee carries a continuing responsibility for insuring that the antitrust laws are enforced and it must insist that competitive conditions which allow small business to thrive are present in trade and commerce. Two agencies are charged with the administration of the antitrust laws—the Federal Trade Commission and the Antitrust Division of the Department of Justice.

The primary responsibility of the Antitrust Division of the Department of Justice is the proper enforcement of the antitrust and related laws under its jurisdiction. In the quality of this enforcement the Division succeeds or fails in its ultimate goal—the preservation of unobstructed channels of competition and the promotion of unrestrained trade and commerce.

Since May of 1953, the Antitrust Division has brought suit in 28 civil and 22 criminal cases. Study of the complaints filed in these cases reveals that the Division concentrated its attack upon antitrust evils, such as price fixing, allocation of territories or customers, and boycotts—all clear-cut violations of the Sherman Act. This pattern is consistent with the Division's announced policy of stressing "violations which have been well established as illegal for a number of years." However, the Division found its policy sufficiently flexible to explore successfully new areas of antitrust enforcement. For example, in the General Electric case, a consent decree was entered providing for the royalty-free licensing of patents. The Division also set a precedent in the case of the Empro Corp., a perfume manufacturer, by prohibiting, in the consent decree entered, the restrictive use of trademarks.

The important monopoly cases instituted by the Division included actions against the United Fruit Co., charging trade restraints and monopolization in the banana industry; against American Smelting & Refining Co. and St. Joseph Lead Co., charging monopolization in the production and sale of primary lead; against Panagra, charging restriction of trade and monopoly of air transportation between the United States and Latin America; and against Radio Corporation of America, charging monopolization of the radio-television patent-licensing business by means of various agreements in illegal restraint of both the radio-television licensing business and the manufacture, sale, and distribution of radio-television products and devices. If the courts uphold the Department of Justice in these cases, many competitive opportunities for small business will be created.

Your committee has long been concerned over the seemingly impossible task which confronts a small-business man wishing to com-

pete in certain fields under the domination of a few well-entrenched companies. Thus, it was interested in civil and criminal actions started in the case of the National Malleable & Steel Castings Co., et al., involving six manufacturers of railroad couplers. By requesting the court to compel licensing of patents and know-how, the Division seeks in this case to permit entry of new coupling producers in a field which in the past allegedly barred potential competitors.

Important in preserving freedom of entry is the proceeding against the American Smelting & Refining Co., and the St. Joseph Lead Co. This suit strikes at various alleged restrictive practices which have barred entry into the primary lead industry, regulated lead production, as well as limited price competition. As a result of this case, competitive conditions may be secured in this basic industry.

In addition to easing market entry, cases were aimed to unpeg collusively fixed prices. To this end, the Division proceeded against the Wholesale Produce Buyers' Association in Detroit, which had allegedly boycotted the Detroit terminal in order to bar produce sales to small grocery-store operators. To compete with large chainstores and supermarkets, small stores sought to eliminate wholesalers' markup by buying edibles directly from carlot receivers at the produce terminal. Approximately $50 million worth of fresh fruit and vegetables pass through these terminals each year. The Division sought to strike down large buyers' boycott efforts.

Another suit filed by the Antitrust Division holds a particular interest for your committee: The case of Seafarers Sea Chest Corp., et al., in which the Seafarers' union and a union-owned and -operated corporation are charged with conspiring to restrain and to monopolize the sale of supplies to ships' stores. This proceeding stems from a complaint received by the committee from a small-business man denied an opportunity to serve the needs of the various ships' stores. The committee sent the complaint to the Antitrust Division with the request for investigation. Should the Division be successful in this suit, small merchants will again be free to share in the sale of some $4 million worth of supplies to ships' stores.

The Antitrust Division has also taken effective steps in clearing up the antitrust calendar. Historically, long-time lapses have occurred between the filing of an antitrust case and its final disposition. Since such delays generally stem from crowded court calendars, protracted trials, and unduly lengthy negotiations for settlement, many thought the situation could not be remedied. The Division, however, resorted to several procedural techniques to speed up this process. Motions for summary judgment have been used to a greater extent than ever before, thus obviating the need for a trial upon disputed issues of fact. Efforts have been made to work out with defense counsel stipulations on a wide variety of matters in many cases and have achieved considerable success. This has often drastically reduced the length of trials or has made a motion for summary judgment feasible. Also employed has been the pretrial conference, so strongly urged in the judicial conference's report on the trial of antitrust and other protracted cases. This procedure has generally aided in shortening the time necessary for trials.

In the past 20 months, the Division has continued to observe the operations of judgments which have been entered in antitrust cases in an effort to make sure that the defendants have been obeying the

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decrees of the court and that the decrees, as entered, have operated effectively to achieve the purposes intended. Such review of the operation of earlier judgments has resulted in the institution of 7 contempt proceedings; and, in 5 cases, judgments have been modified on the application of interested parties, and the Antitrust Division has secured adequate safeguards in the amendments to prevent violation of the initial purposes of the decrees.

Particular attention may be given a recent procedural innovation of the Antitrust Division. By means of so-called prefiling negotiations, the Division seeks to effect consent judgments prior to the filing of complaints. Where possible, the situation is discussed with defense counsel before filing a civil case in order to work out a consent decree to be filed simultaneously with the complaint. This procedure expedites the disposition of cases, since it avoids the necessity for trial and eliminates the time-consuming preparation for litigation which would otherwise be necessary. As a result of this new procedure, in about 10 cases consent decrees have been entered at the same time as, or very shortly after, filing of a formal complaint.

The most noteworthy example of prefiling negotiations is the Eastman Kodak case. In July of 1954 the Division notified Eastman that it was prepared to file charges that it was monopolizing the color-film-processing field through distribution practices by means of which Eastman controlled prices and conditions of sale of film, thereby preventing competing photofinishers from gaining access to this market. After a series of meetings around the conference table, a decree acceptable to Eastman and to the Government was agreed upon. It was entered on December 21, 1954, at the same time as the formal complaint was filed with the court.

The Division believes that this decree will achieve its purpose of promoting competition in the field of color film processing, thus protecting the public interest. At the same time, it will offer to Eastman a legal and practicable way of doing business.

The net effect of these procedural changes would seem to be evidenced in the following: During the period May 1, 1953, to January 1, 1955, 96 cases were terminated; 28 of these were criminal prosecutions, disposed of in 3 cases by pleas of guilty; in 19, by pleas of nolo contendere; 2, by verdicts of guilty; and 4 were dismissed (2 on Government motion). Sixty-five civil cases were closed; 46, by consent decrees; 11, by litigated judgments, of which the Government won 7; and 8 cases were dismissed by the court (4 on Government motion). This emphasis upon speedy justice is praiseworthy since small business adversely affected by antitrust violations cannot long survive.

As your committee has noted elsewhere in this report, the continuing trend toward mergers and consolidations of business units makes section 7 of the Clayton Act particularly important in the enforcement of the antitrust laws. The 1950 amendment to section 7 permits attack upon acquisition of assets as well as of stock, thus giving the Division a more effective weapon to prevent incipient monopoly.

Under certain circumstances the Division may grant a clearance for a proposed merger or acquisition. With respect to a proposed merger, the parties may confer with Division representatives for the purpose of obtaining a statement that the proposed merger would not be made the subject of legal proceedings. Following such conferences, if the Division finds that the proposed merger does not raise fatal questions

under the antitrust laws, it may indicate to the parties in writing that it does not intend to take legal action against the merger, nevertheless reserving the right to take action if subsequent developments and operations warrant. The Division also looks into other mergers which come to its attention and which appear to raise questions under the antitrust laws.

The Division studied and disapproved the proposed merger of Bethlehem Steel Corp. and Youngstown Sheet & Tube Co. in 1954. In this decision, it was pointed out that a merger does not necessarily have to result in a Sherman Act monopoly to be illegal. Under the Clayton Act, it said, a violation would exist since Bethlehem and Youngstown rank second and sixth among fully integrated steel companies and there exists substantial competition between the companies in a number of products in certain areas of the country. The effect of the merger would be to eliminate such competition.

Since the current enforcement policy of the Antitrust Division is still in its formative stage, a definitive appraisal of its merits or lack thereof would be premature. Until the policy has attained full development, the extent to which it accomplishes the purposes of the antitrust laws will be uncertain. Even the Chief of the Division, Assistant Attorney General Stanley N. Barnes, in a speech before the American Bar Association, stated that the "vigor of antitrust enforcement cannot be said to be diminishing." However, your committee finds much to inspire confidence in the work of the Division.

The Division seems willing to take steps to remove the restraints and to suppress the monopolies which sap the strength and prosperity of our Nation and inhibit the birth and growth of small business. There seems to be no tendency to avoid battle with the giants of industry whose violations of the law can produce much serious injury to small business.

TABLE A.—*Antitrust cases instituted May 1, 1953, through Dec. 31, 1954 (28 civil and 22 criminal)*

Title of case	Industry or commodity	Acts involved
FOOD		
U. S. v. *La. Fruit & Vegetable Producers Union, Local 312, et al.* (criminal).	Strawberry and perishable produce.	Sherman Act, sec. 1.
U. S. v. *Wholesale Produce Buyers Assn., et al.* (criminal).	Fresh fruits and vegetables.	Do.
U. S. v. *Wholesale Produce Buyers Assn., et al.* (civil).	do	Do.
U. S. v. *Toledo Milk Distributors Assn.* (criminal).	Milk, cream, butter	Do.
U. S. v. *United Fruit Co.* (civil)	Bananas	Sherman Act, secs. 1 and 2.
U. S. v. *Inland Coca-Cola Bottling Co., et al.* (criminal).	Soft drinks	Sherman Act, sec. 1.
INDUSTRIAL SUPPLIES		
U. S. v. *Chattanooga Chapter, Na. Electrical Contractors Assn., Inc., et al.* (criminal).	Electrical equipment	Do.
U. S. v. *Na. Electrical Contractors Assn., N. J. Chapter, Inc., et al.* (criminal).	do	Do.
U. S. v. *The Torrington Company* (civil)	Machine needles	Sherman Act, secs. 1 and 2.
U. S. v. *The Cincinnati Milling Machine Company, et al.* (civil).	Milling machines	Do.
INSURANCE		
U. S. v. *New Orleans Insurance Exchange* (civil).	Fire and casualty	Do.
U. S. v. *Liberty Na. Life Insurance Company, et al.* (civil).	Funeral merchandise and burial insurance.	Sherman Act, secs. 1 and 2; Clayton Act, sec. 3.

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TABLE A.—*Antitrust cases instituted May 1, 1953, through Dec. 31, 1954 (28 civil and 22 criminal)*—Continued

Title of case	Industry or commodity	Acts involved
OFFICE SUPPLIES		
U. S. v. American Lead Pencil Co., et al. (criminal).	Pencils	Sherman Act, sec. 1.
U. S. v. American Lead Pencil Co., et al. (civil)	do	Do.
U. S. v. S. Barker's Sons Co., et al. (criminal)	Office supplies	Do.
TOILET GOODS		
U. S. v. Guerlain, Inc. (civil)	Toilet goods	Sherman Act, sec. 2.
U. S. v. Parfums Corday, Inc. (civil)	do	Do.
U. S. v. Lanvin Parfums, Inc. (civil)	do	Do.
U. S. v. Empro Corp. (civil)	do	Do.
TRANSPORTATION		
U. S. v. Nationwide Trailer Rental System Inc., et al. (civil).	1-way trailer rental	Sherman Act, sec. 1.
U. S. v. Pan Amer. World Airways, Inc., et al. (civil).	Air transportation	Sherman Act, secs. 1, 2, and 3.
U. S. v. Milk Wagon Drivers' Union Local 753 International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America (criminal contempt).	Delivery of milk	Sherman Act, secs. 1 and 2; Clayton Act, sec. 2A (original case).
U. S. v. Milk Wagon Drivers' Union Local 753 International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America (civil contempt).	do	Do.
MISCELLANEOUS		
U. S. v. Haverhill Fuel Oil Dealers Assn., et al. (criminal).	Fuel oil	Sherman Act, sec. 1.
U. S. v. Lowell Fuel Oil Dealers Associates, Inc., et al. (criminal).	do	Do.
U. S. v. Lawrence Fuel Oil Institute, Inc., et al. (criminal).	do	Do.
U. S. v. American Smelting & Refining Co., et al. (civil).	Primary lead	Sherman Act, secs. 1 and 2.
U. S. v. Norfolk Southern Railway Co., et al. (criminal).	Dealing in securities	Clayton Act, sec. 10.
U. S. v. National Malleable & Steel Castings Co., et al. (criminal).	Railroad car couplers	Sherman Act, secs. 1 and 2.
U. S. v. National Malleable & Steel Castings Co., et al. (civil).	do	Do.
U. S. v. Walton Hauling & Warehouse Corp., et al. (criminal).	Hauling theatrical scenery and equipment.	Do.
U. S. v. Walton Hauling & Warehouse Corp., et al. (civil).	do	Do.
U. S. v. R. L. Polk & Co., et al. (civil)	City directories	Do.
U. S. v. J. Myer Schine, et al. (criminal contempt)	Motion picture theater	Do.
U. S. v. J. Myer Schine, et al. (civil contempt)	do	Do.
U. S. v. Owyhee Bottled Gas Serv. et al. (criminal)	Liquefied petroleum gas	Sherman Act, sec. 1.
U. S. v. Charles A. Krause Milling Co. et al. (criminal).	Brewers' corn goods	Do.
U. S. v. Cigarette Merchandisers Assn., Inc., et al. (criminal).	Cigarette vending machines.	Sherman Act, secs. 1 and 2.
U. S. v. Cigarette Merchandisers Assn., Inc., et al. (civil).	do	Do.
U. S. v. American Can Co. (criminal contempt)	Cans, closing machinery	Sherman Act, secs. 1 and 2; Clayton Act, sec. 3 (original case).
U. S. v. Associated Credit Bureaus of America, Inc. (criminal contempt).	Retail credit reports	Sherman Act, secs. 1 and 2 (original case).
U. S. v. Standard Ultramarine & Color Co. et al. (civil).	Ultramarine blue and laundry blue.	Sherman Act, sec. 1.
U. S. v. Embroidery Cutters Assn. (criminal)	Cutting and finishing	Do.
U. S. v. Seafarers Sea Chest Corp. et al. (civil)	Seaman's gear; clothing, tobacco, etc.	Sherman Act, secs. 1 and 2.
U. S. v. Radio Corp. of America (civil)	Radio-television	Do.
U. S. v. Philco Corporation (civil)	Philco products	Sherman Act, sec. 1; Clayton Act, sec. 3.
U. S. v. Watchmakers of Switzerland Information Center, Inc., et al. (civil)	Jeweled watches; repair and component parts.	Sherman Act, sec. 1; Wilson Tariff Act, sec. 73.
U. S. v. Embroidery Cutters Assn. et al. (civil)	Embroidery cutting	Sherman Act, sec. 1.
U. S. v. Pleaters, Stitchers & Embroiderers Assn., Inc. (civil).	Ladies' wearing apparel, pleating, stitching, and embroidering.	Do.
U. S. v. Eastman Kodak Co. (civil)	Kodacolor and Kodachrome film.	Sherman Act, secs. 1, 2, and 3.

TABLE B.—*Antitrust cases terminated May 1, 1953, through Dec. 31, 1954*

CIVIL CASES WON

Consent:
- Westinghouse Electric & Mfg. Co.
- National Assn. of Printers' Roller Mfrs.
- Norma-Hoffman Bearings Corp.
- Assn. of Knitted Glove & Mitten Mfrs., Inc., et al.
- Bearing Distributors Co., et al.
- Boston Market Terminal, et al.
- Briggs Mfg. Co., et al.
- Harry A. Dubroy, et al.
- General Electric Co., et al.
- Northern California Plumbing & Heating Wholesalers Assn., et al.
- Switzer Bros. Inc., et al.
- Telescope Carts, Inc., et al.
- Western Newspaper Union, et al.
- Republic Steel Corporation
- General Electric Co., et al.
- U. S. Rubber Co., et al.
- The N. Y. Great Atlantic & Pacific Tea Co., Inc., et al.
- Celanese Corp. of America
- Scott & Williams, Inc., et al.
- Nat'l. Assn. of Vertical Turbine Pump, Mfg., et al.
- Crescent Amusement Co. et al.
- Servel, Inc.
- Nat'l. Automotive Parts Assn. et al.
- Investors Diversified Services, Inc., et al.
- Minneapolis Electrical Contractors Assn. et al.
- Tobacco & Candy Jobbers Assn., Inc., et al.
- Blaw-Knox Co.
- Hunter Douglas Corp.
- Nat'l Electrical Sign Assn. et al.
- Golden Gate Chapter, Nat'l. Electronic Distributors Assn. et al.
- Nat'l. Ice & Cold Storage Co. of Calif. et al.
- The Shade Tobacco Growers Agricultural Assn., Inc., et al.
- The Stationers Assn. of So. Calif., Inc., et al.
- American Lead Pencil Co. et al.
- Cincinnati Milling Machine Co. et al.
- Empro Corp.
- Liberty Nat'l. Life Insurance Co. et al.
- Food Machinery & Chemical Corp. et al.
- Bendix Aviation Corp.
- Providence Fruit & Produce
- Standard Ultramarine & Color Co.
- Embroidery Cutters Assn.
- Pleaters, Stitchers & Embroiders Assn.
- Pittsburgh Crushed Steel Co.
- Wallace & Tiernan
- Eastman Kodak

Litigated:
- Southwestern Greyhound Lines, Inc., et al.
- General Electric Co. et al.
- General Instrument Corp. et al.
- Sears, Roebuck & Co. et al.
- United Shoe Machinery Corp.
- Nat'l Football League et al.
- Nat'l. Assn. of Leather Glove Mfgrs., Inc.

CIVIL CASES LITIGATED—LOST

- Kohler Co.
- Times-Picayune Publishing Co.
- Henry S. Morgan et al.
- Chicago Mortgage Bankers

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CIVIL CASES DISMISSED

The Kroger Co. (by court)
Cement Institute et al. (on Government motion)
Columbia Gas & Electric Co. (on Government motion)
W. T. Grant Co. of N. Y. (by court)
Sears, Roebuck & Co. (by court)
Sunbeam Corp. (on Government motion)
Armour & Co. et al. (by Government motion)
Western Pennsylvania Sand (by court)

Total civil cases closed, 65:

Won	53	(46 consents)
Lost—litigated	4	
Dismissed	8	(4 by Government; 4 by court)

CRIMINAL CASES WON—NOLO CONTENDERE

Nat'l Assn. of Printers' Roller Mfg.
Allegheny County Retail Druggists' Assn. et al.
Baugh & Sons Co. et al.
Diamond Dealers Club, Inc., et al.
Norfolk Southern Railway Co. et al.
Northland Milk & Ice Cream Co. et al.
H. Perilstein et al.
Tobacco & Candy Jobbers Assn., Inc., et al.
Thomas P. Henry Co. et al.
The Great Western Food Distributors, Inc., et al.
The Great Western Food Distributors, Inc., et al.
Union Ice Co. et al.
Western Penna. Sand & Gravel Assn. et al.
Western Penna. Sand & Gravel Assn. et al.
American Lead Pencil Co. et al.
Owyhee Bottled Gas Service et al.
Inland Coca-Cola Bottling Co.
Wallace & Tiernan
Pittsburgh Crushed Steel Co.

CRIMINAL CASES WON—GUILTY PLEA

Louisiana Fruit & Vegetable Producers Union, Local 312, et al.
Embroidery Cutters Assn.
Charles A. Krause Milling Co.

CRIMINAL CASES DISMISSED

Starlite Drive-In, Inc., et al. (by court)
Crescent Amusement Co. et al. (on Government motion)
Bowman Dairy (by Government)
American Can Co. (by court)

CRIMINAL CASES WON—LITIGATED

Minneapolis Electrical Contractors Assn. et al.
Las Vegas Merchant Plumbers

Total criminal cases closed, 28:

Won	24	
Dismissed	4	(2 by Government; 2 by court)

Total number of cases closed, 92.

Section B. The Role of the Federal Trade Commission

The Federal Trade Commission has been charged by Congress with the proper enforcement of certain antitrust laws having vital significance for the small-business community. Such legislation includes the Federal Trade Commission Act, various sections of the Clayton Act (notably the Robinson-Patman amendment and sec. 7), and a number of more-detailed statutes, examples of which are the Wool

Products Labeling Act, the Fur Products Labeling Act, and the Flammable Fabrics Act. While these statutes are not small-business legislation in the strict sense of the term, it cannot be denied that their enforcement vitally affects the health and prosperity of the small-business community. The competitive position of small business is only as strong as the antitrust enforcement which maintains it.

Of considerable interest to your committee have been the public statements of Edward F. Howrey, Chairman of the Federal Trade Commission, that the Sherman Antitrust Act and the Federal Trade Commission Act, on the one hand, and the Robinson-Patman Act, on the other, are fundamentally consistent legislation. According to Mr. Howrey, these antitrust statutes are to be construed "in pari materia": they are complementary in that they gear the privilege to compete with the obligation to compete fairly.

On a somewhat related point, the Commission has formally held that the Federal Trade Commission Act and the Resale Price Maintenance Act, the so-called McGuire Act, are not to be interpreted so as to preclude the fair trading of the products of a manufacturer who also has his own retail outlets. This was decided in the recent Eastman Kodak case in which Chairman Howrey's opinion was concurred in by three Commissioners, Commissioner Mason not participating. The effect of a contrary ruling would have been to remove from the operation of fair trade an almost incalculable number of products made by manufacturers having their own retail outlets.

In the field of antimonopoly enforcement, a subject of special concern to small business, the activities of the Commission during 1954 included the issuance of 30 complaints and 25 orders.

Antimonopoly complaints issued during last 4 fiscal years

Fiscal year 1951	29	Fiscal year 1953	29
Fiscal year 1952	29	Fiscal year 1954	30

Antimonopoly orders issued during last 4 fiscal years

Fiscal year 1951	23	Fiscal year 1953	24
Fiscal year 1952	24	Fiscal year 1954	25

There has been an appreciable speedup in Commission proceedings through extensive use of the consent-order procedure. Properly utilized, the consent order has much to recommend it, although several pitfalls constantly must be guarded against. In the first place, an insensitive FTC could exert tremendous pressure upon a businessman to agree to a consent decree he felt unfair through its powers to subject that individual to lengthy and expensive field investigations and administrative proceedings. On the other hand, the Commission must be careful not to compromise its principles in agreeing to a consent decree which does not adequately guard against unfair trade practices.

Nonetheless, a fair and satisfactory consent decree avoids the delay and expense incidental to litigated cases and at the same time can achieve results which are equal to those which might be accomplished through protracted hearings and appeals. A respondent waives his rights, for example, to contest in any court the validity of any decree he has signed.

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During the past year, the Federal Trade Commission issued 38 consent cease-and-desist orders. Of these, all but 7 were issued in less than 8 months after filing of the complaint. In 25 cases, or more than one-half, orders were issued less than 6 months after complaint. Twenty-three orders were issued from May through December of 1954 when the extended consent settlement procedure became effective.

The primary objective of the Commission is to secure and maintain compliance in a large number of cases rather than to devote all its resources to obtaining a small number of civil penalty judgments. On the other hand, the objective of fostering its aims often cannot be attained without a judicious and prompt application of the civil penalty procedures where, after every reasonable effort, compliance has not been and apparently cannot otherwise be obtained.

Since the Commission was activated in March 1915, it has issued approximately 4,600 cease-and-desist orders. Until August 1954, the Division of Compliance had been able since its creation in 1947 to make adequate study of compliance in less than 600 such orders. At that time, a survey of compliance with outstanding orders was begun. As of December 31, 1954, more than 1,000 of these older orders have been examined and the files reviewed. Of this number, about 400 cases have been screened out as requiring no attention at this time; 366 supplemental reports of compliance have been requested; and in about 300 cases respondents are now known to be in compliance. As a result of this new survey, 16 compliance investigations have been instituted and 2 civil penalty suits are in process of preparation. Since August 1, 1954, 158 reports of compliance have been received and filed as satisfactory in connection with this survey.

During the calendar year, the Commission has given and proposes to continue to give attention to compliance work, and the foregoing survey has been begun to establish a pattern for screening and integrating the procedure necessary to coordinate attention not only to the 4,000 old orders but to some 8,000 stipulations and 190 trade practice conference rules so that there will be no overlapping nor lack of uniformity in the requirements imposed upon respondents with regard to similar practices.

To facilitate checking up on compliance with these 4,600 orders, as well as 8,500 stipulations and 180 sets of trade-practice rules relating to advertising, a special "task force" of 4 attorneys has been detailed from existing personnel and placed under the supervision of the Compliance Division. The mission of this unit is to examine national and regional advertising by respondents subject to orders, stipulations, and rules. In addition, there will be an incalculable deterrent effect on illegal commercial practices in interstate commerce when it becomes generally known that the Commission is maintaining this degree of vigilance in its compliance-enforcement program.

During 1954, the FTC established a Small Business Division to provide information for small businesses that desire a knowledge of the laws the Commission was designed to enforce and also to inform them of the disposition of complaints filed with the FTC. This is conceived as a staff office with informational duties only.

Your committee has received many complaints that the Federal Trade Commission is presently interpreting some of the statutes it has been given to enforce in such a way as to negate the congressional

intent embodied in the law. In at least one case, the "good faith" defense in Robinson-Patman pricing violations, the FTC's stand has probably been largely dictated by a decision of the United States Supreme Court in the Standard Oil Co. of Indiana case (*Standard Oil (Ind.)* v. *Federal Trade Commission*, 340 U. S. 231, 1951). A complete congressional review of its past actions with recommendations for comprehensive and up-to-date legislation certainly appears desirable to your committee. Perhaps the report of the Attorney General's National Committee on the Antitrust Laws will mark a good launching point for such a reevaluation.

Furthermore, your committee feels that the Federal Trade Commission has not always given the proper priority to the varied tasks it might take up if its resources were unlimited. Given the limitations imposed upon it by its budget, it, like every other agency of the Government, must determine which cases are the most important, which trade practices exert the greatest influence upon competition, and which malpractices must be met head on at the earliest possible moment. Many small-business men who closely observe the FTC have felt that it has not husbanded its resources sufficiently and that it has devoted too much of its strength to peripheral issues, while other forces striking at the very heart of the American free-enterprise system have been held in abeyance waiting their turn in line. It is to be hoped that the Commission will take a long second look at its responsibilities and determine where its dollars and manpower can best be spent in preserving the vigor of the Nation's competitive economy.

Section C. Independent Tire Dealers

To determine precisely when a concentration of economic power jeopardizes freedom of enterprise within any industry poses a question which is hard to answer. The recent conditional statement of Edward F. Howrey, Chairman of the Federal Trade Commission, that the United States Steel Corp. "may be too big," illustrates the understandable reluctance of even official antimonopolists to make categorical assertions about a corporation the study of whose influence on competition has been exhaustively explored for decades by lawyers and economists.

Despite its obligation to help protect small-business men from being manhandled by monopolists, your committee professes to no special prescience in detecting when the level of free competition in any given industry is sinking below the peril point. Reliance on certain commonsense criteria is, therefore, unavoidable. Consideration of competition in any industry in which small, independent businessmen have historically played a leading role must provide answers to three basic inquiries. First, has the share of a market held by independent enterprises engaged in a particular industry markedly and persistently declined? Second, is competition stemming from a concentration of economic power a primary reason why the smaller units have found their share of the market narrowed? Third, is the percentage of the overall market formerly held by small concerns accruing to the largest units within the industry?

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Application of these criteria to independent rubber-tire dealers[1] shows at a glance why your committee continues to be gravely concerned over the concentration of controlling influence within the tire industry.

Each of these three yardstick questions must be answered affirmatively. Yes, the market share of small dealers has steadily shrunk. Yes, intensity of competition as reflected in the distribution and selling practices of large manufacturers plus such mass merchandisers as mail-order houses, oil-company gasoline stations, and manufacturer-owned or -conrolled retail stores, is a primary reason why independent dealers have been forced out of their historic market place as prime suppliers to the automobile owners. And, yes, the losses of the small dealers have inevitably become the gains of the industry's large units.

Your committee feels that the problems of the Nation's some 20,000 independent tire dealers are generally unheeded or misunderstood. Mere contemplation of vehicle registrations for 1954, for instance—48 million passenger cars; 9,792,000 trucks; 250,000 buses[2]—in no way indicates the potential sales market available to independent dealers. At the outset, small dealers are excluded from the new-car market, the so-called original equipment, for this is preempted by the tire manufacturers with the Big Four furnishing about 98 percent of all new tires and tubes placed on the running wheels of new cars as well as the fifth or "spare" tire. (Independents feel that the "demonopolization" of the spare tire arrangement with automobile manufacturers would give their segment of the industry a new lease on life.)

It is not until new tires wear out and require replacing that tire dealers can expect to make a sale. It is significant that in 1926 independent dealers supplied about 90 percent of the demand for replacement tires and tubes. Currently, the consensus of the industry places the independents' share of the replacement market at approximately 50 percent. The undeniable fact is that while the market for tires has grown with the phenomenal expansion of the automotive industry, the independent dealers' share of this market has steadily contracted.

Any realistic appraisal of the problems faced by small tire dealers must seek cause and effect in the type of competitive practices, the mores of the market place, prevalent in the industry. To some 20,000 independent dealers the prospect of competing with their larger business rivals on anything like equal footing has been disparagingly remote. In the daily struggle for survival, the small tire dealer finds himself pitted against three major competitive forces. First, he is in direct competition with the major oil companies whose heavy volume purchases, at slashed discounts, are marketed through the Nation's network of gasoline service stations. Second, auto-supply chains and the large mail-order houses sell tires under their own brand

[1] "Independent tire dealers make their living by buying and selling tires and tubes, both new and used, by the renewing of worn casing, and by general repair servicing. The distinguishing characteristics of the small independent tire dealer are that he operates on his own capital; he is relatively free to select the brands of tires in which he deals; he sells at wholesale and retail levels, or a combination of both; and his market area is usually confined to the community in which his place of business is located. He has, moreover, no management or financial ties with other companies and he conducts his business entirely by his own initiative" (Problems of Independent Tire Dealers, staff report to the Select Committee on Small Business, committee print, 83d Cong., 1st sess., July 27, 1953).

[2] Preliminary estimate, Bureau of Public Roads, U. S. Department of Commerce.

names. Third, the independent dealer often finds himself matched against his own manufacturing source of supply who sells in large volume direct to consumers. Thus, the small dealer, as retailer, must compete with such manufacturing mammoths as Firestone, Goodyear, and Goodrich, also functioning as retailers through their more than 1,600 company-operated stores located in strategic mass-market areas.

To a small dealer trying to move tires from his shop racks to the wheels of automobiles in his community, this competition from manufacturer-owned retail outlets seems a particularly cruel form of competition. With respect to this practice, your committee has taken interested notice of a survey conducted by the Burger Tire Consultant Service which polled and analyzed dealer sentiment regarding tire manufacturer-company store competition during the month of October 1954.

The composite independent dealer participating in this survey has been in business 21 years; his gross annual volume is about $145,000; he does 45 percent of his volume at retail, 29 percent with commercial accounts such as bus companies and truck fleets, and 26 percent at wholesale. On the average, he payrolls 10 employees.

Ninety-three percent of the dealers surveyed reported one or more company-owned retail outlets operating in their sales territory. Thirty-seven percent reported that their own manufacturing sources of supply are competing with them through company stores in their areas.

Sixty-one percent of the dealers alleged that the presence of manufacturer-operated stores in their trading areas resulted in independent dealers going out of business. Furthermore, of those polled, 85 percent stated that manufacturer-store rivalry cut into their own volume and profits.

When it comes to buying prices and services offered by manufacturers to independent dealers compared with buying prices and services manufacturers provide their own retail outlets, two-thirds of the small independent dealers were of the opinion that the tire producers favor their own stores. Below are quoted several typical replies to the question:

> Do tire manufacturers who operate company stores give their independent outlets the same buying prices and services as they give their company stores?
>
> Answer: Many times no, dependent upon volume of dealer. Common knowledge is that company-owned stores can sell in the red on the retail level and make the company money at manufacturers and jobbers level.
>
> Answer: Our tire purchases for 1954 will amount to approximately $300,000. Therefore, as I understand it, our cost is the same as the company store. However, I pay the Federal tax when I buy tires, while the company store pays the tax when they sell tires. They have the advantage of unlimited capital, whereas I must borrow money at the bank and pay interest on it.

It is clear to your committee that the majority of these small, independent tire dealers firmly believe that competition from company stores is, if not actually hitting below the belt, at least unfair by any acceptable standard of commercial ethics. That the general view expressed seems to be one of resigned acceptance to a situation for which no remedy has as yet presented itself, does not lessen the obligation of those charged with fostering a climate conducive to free competition to view this problem with deep concern.

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Congress and the Federal Trade Commission have considered the plight of tire dealers sufficiently serious to warrant action in their behalf. As long ago as June 1942, a measure known as the rubber-tire bill was introduced in the Senate and referred to the Banking and Currency Committee. The purpose of this bill was to divorce tire manufacturing from retailing, much the same as meat packers, motion-picture producers, and distilleries are precluded from selling their products direct to the consumer. Since 1942, a rubber-tire bill has been introduced in the Senate in each succeeding Congress. During 1954, testimony was taken by a subcommittee of the Senate Judiciary Committee on S. 175, the objective of which was to assure that—

> all new, rebuilt, retreaded, and recapped tires, * * * sold or delivered in the course of trade or business to consumers (except Government agencies) shall be sold or delivered only by or through independent tire dealers. * * * The term "independent tire dealer" does not include any person engaged in manufacturing tires, automobiles, automotive equipment, or motor-vehicle fuels or lubricants, * * *.

During the hearings on S. 175, an independent dealer, Charles Raney, Jr., of Akron, Ohio, told the subcommittee:

> If I thought that the past and present trends in the distribution of tires were to continue without correction, I would sell my business without further consideration and attempt to obtain employment with one of the major rubber companies, because as surely as time passes, there is where we dealers would eventually be if we wished to remain with the tire industry. How can I, as an independent tire dealer, hope to compete with my own suppliers, when they are attempting to make deals direct with the consumer at prices very near those that I pay and in some instances considerably below?

Although S. 175 was favorably reported by the subcommittee, the Judiciary Committee did not consider the measure before the end of the session. Such a bill was reintroduced during the first week of the 84th Congress.

In January 1952, the Federal Trade Commission, invoking the price-discrimination authority of the Robinson-Patman Act, promulgated a quantity-limit-discount ruling for the tire industry which established a carload as the maximum amount on which a manufacturer could make a discount. Essentially, this ruling aimed at remedying a situation whereby small low-volume dealers received as little as 28.33 percent discount from list price while larger dealers, buying in greater volume, received as much as 40.83 percent off list price. The advantages accruing from this discount spread were sufficient, in the Commission's view, to constitute price discrimination within the meaning of the statute.

Some 20 tire manufacturers and large distributors attacked this ruling by applying for a court injunction. The matter is now pending before the United States District Court for the District of Columbia. On November 30, 1954, attorneys for the Department of Justice indicated their intention to move for a summary judgment. Your committee shares the belief of Government attorneys that in asking the court to decide by summary judgment whether or not the Commission adhered to all necessary legal requirements in promulgating the ruling, an attack on the ruling attempting to show irreparable damage will be difficult to sustain.

That relief from some direction is imperative, very few, if any, independent tire dealers will deny. The year 1954 will go down as one of the most fiercely competitive periods the rubber industry has ever struggled through. Price wars, always sporadic in the industry, last year reached almost epidemic proportions. And at the same time that costs were soaring, tire production fell substantially below the 1953 figures. In the last year, production of passenger and motorcycle tires totaled 81,431,000 compared with an estimated 76 million for 1954. Truck and bus casings fell off in the same period from 14,690,000 to an estimated 12,300,000. Industry sources believe that final figures for 1954 will show that sales dropped about 3.7 percent under the 1953 volume.

Your committee is aware that the problems of the tire industry are not confined to the small dealers. Some executives in the smaller tire-producing companies are speculating whether their companies will be in business 10 years from now. The mortality figures fail to reassure. In 1920 some 300 companies produced rubber tires. Today, only a score of concerns are turning out tires and tubes.

No better insight into the problems of the typical small, well-managed tire-producing company can be gained than from the candid letter addressed to stockholders by J. P. Seiberling, president of the Seiberling Rubber Co., founded in 1921. In outlining the position of his company at the end of the first 9 months of 1954, Mr. Seiberling told his stockholders:

> The economic dip that started with the Korean armistice was particularly hard on the tire business. Production of new cars and trucks was slashed, reducing the need for original equipment tires and creating excess tiremaking capacity, which was dumped on the replacement market.
>
> While the replacement market was slightly better in the passenger field (in trucks it was worse), there were just too many tires for the market to absorb.
>
> The inevitable result was price cutting. This year, although the price cutting was "under cover" in the form of extra concessions to dealers, it was very severe—the worst in our experience. It started in early spring and got worse by summer, until all profit margins had been wiped out.
>
> Meanwhile, manufacturing costs were going up. Rubber prices increased, other materials advanced in price, and the industry granted a 3-percent wage increase.
>
> It was not until early November that we got a small measure of relief in the form of an increase in the list prices of some tire lines, although this will not even cover increased costs.
>
> This cost-price squeeze has been universally bad for tire companies that depend largely on the replacement market, including Seiberling. On the other hand, the larger rubber companies have benefited from it.
>
> Being widely diversified—and with good earnings from nontire lines—they have been able to subsidize small-profit or no-profit prices in the replacement field in order to bid for a larger share of the market. The smaller, nondiversified companies must either meet the price or lose the business, and they do not have other lines to supply compensating profits.
>
> That is the situation as of now, and we have no assurance that it will improve in the near future. What, then, can we do about it?
>
> One thing we can do is to speed along our own diversification program as rapidly as possible.
>
> Another is to seek new large-volume customers for replacement tires, to keep our tire plant operating at full capacity.
>
> Another is to cement our relationships with customers by maintaining high product quality, and intensifying our selling effort.
>
> All these things are being done. However, if they are to be effective, all of them require an investment of capital, which unfortunately has not been provided from earnings this year.

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That Seiberling is not the only small rubber company that views the future with apprehension may be inferred from the following table showing selected financial data for the so-called Big Four, Goodyear Tire & Rubber Co., Goodrich (B. F.) Co., Firestone Tire & Rubber Co., and U. S. Rubber Co., compared with data on several smaller tire-producing concerns. It is to be noted with interest but not surprise that the net income after taxes on the Big Four for the 1954 reporting period covered fell 7.4 percent under 1953 while the net profit after taxes of the smaller companies dropped off 31.9 percent.

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Tire and rubber companies: Selected financial data, 1953–54 [1]

Company	Period covered	Sales		Net before taxes		Net income		1954 as a percent of 1953	Percent increase and/or decrease
		1953	1954	1953	1954	1953	1954		
Armstrong Rubber Co.	Year ended Sept. 30	$62, 290, 322	$55, 376, 084	$4, 140, 032	$3, 413, 253	$1, 719, 340	$1, 669, 458	97. 1	−2. 9
Cooper Tire & Rubber Co.	1st 9 months	17, 779, 042	10, 843, 060	1, 242, 980	126, 638	415, 211	60, 786	14. 6	−85. 4
Dayton Rubber Co.	9 months ended July 31	43, 981, 346	36, 3:9, 486			1, 305, 781	409, 025	31. 3	−68. 7
General Tire & Rubber Co.	9 months ended Aug. 31	150, 851, 345	154, 962, 719	9, 780, 856	6, 777, 452	5, 505, 856	4, 427, 452	80. 4	−19. 6
Lee Rubber & Tire Corp.	9 months ended July 31	32, 677, 026	27, 885, 394	2, 846, 715	2, 007, 766	1, 252, 715	944, 766	75. 4	−24. 6
Mansfield Tire & Rubber Co.	1st 6 months	33, 192, 955	24, 984, 955	1, 826, 077	588, 046	831, 332	287, 762	34. 6	−65. 4
Seiberling Rubber Co.	1st 9 months	30, 998, 937	27, 180, 252	1, 748, 801	440, 042	762, 063	231, 253	30. 3	−69. 7
Total						11, 792, 298	8, 030, 502	68. 1	−31. 9
The big 4:									
Goodyear Tire & Rubber Co.	do	920, 310, 160	789, 177, 842			35, 321, 461	31, 798, 688	90. 0	−10. 0
Goodrich, B. F., Co.	do	520, 654, 622	466, 499. 115	79. 436, 898	55, 654, 729	26, 701, 898	27, 371, 729	102. 5	+2. 5
Firestone Tire & Rubber Co.	9 months ended July 31	747, 090, 554	683, 033, 661	74, 526, 278	60, 214, 009	32, 626, 278	28, 314, 009	86. 8	−13. 2
United States Rubber Co.	1st 9 months	657, 393, 028	587, 269, 614			21, 488, 326	20, 084, 571	93. 5	−6. 5
						116, 137, 963	107, 568, 997	92. 6	−7. 4

[1] Standard & Poor's Corporation Records.

NOTE.—Before reserves of $1,500,000.

CONCLUSIONS AND RECOMMENDATIONS

Our national economic history is replete with instances of small industry groups sinking into obsolescence as a direct result of technological advances. This is unavoidable and is universally condoned in the name of progress. However, the prospect of an entire retail segment of an established multi-billion-dollar industry facing decimation is a matter which cannot be viewed with tranquility. The opinion of your committee on this problem is that every agency of the Government which has a direct interest in the preservation of our free enterprise system should proceed first to investigate and then to prescribe for the competitive ills which beset the small tire dealer.

In any such investigation, primary stress should properly be placed on the effect of manufacturer-owned stores on competitive practices within the industry. In this connection, study should be made of the adequacy or inadequacy of independent dealers' margins. Here again, the voice of one small dealer speaks with clear conviction:

> There is no question in my mind about the future of the independent tire dealer. The company-owned stores, along with direct sales from the manufacturers' warehouses to consumers, has already cut our gross margin on all new tires to an average of 15 percent. With close controls on operation, it costs us 26 percent of gross sales to break even. We have been able to keep our doors open only by deemphasizing new tire sales and promoting treading, service, wheel alinement, brake services, and batteries.
>
> At one time we were 100 percent tire dealers, but this trend of manufacturers entering our trade area with direct-to-consumer sales has caused us to have to seek other means of holding our margin of profit to a level of retail operation, since we are not tire manufacturers. In doing this we have pushed into other people's trades, thus affecting those not even in our line of business.[3]

Congress has been concerned about tire dealers' problems for many years. Senate Committee Print No. 3, of the 77th Congress, 1st session, a publication of the Special Committee To Study the Problems of American Small Business, contains this summary of the dealers' competitive difficulties by George J. Burger:

> With few exceptions, the problems of the small tire dealer can be classified as follows: (1) preferential treatment accorded company-owned stores by manufacturers owning and operating those stores; (2) the preferential treatment accorded large retail corporations by certain manufacturers; (3) the tire manufacturer-oil company tieup; (4) sales made direct by certain manufacturers to certain large and small trucking operators and to so-called national accounts; (5) sales made direct by certain manufacturers to city, county, State, and Federal Governments, and abuse of these privileges; (6) tires rented on a mileage basis to bus and taxicab operators; (7) the rising costs which result principally from higher labor costs; (8) misleading and deceiving advertising; and (9) lack of standards by which various grades and makes of tires may be judged.

Every Congress since 1942 has seen the introduction of a bill to curb the inroads of manufacturer-controlled retail outlets on dealers' sales. It is the hope of your committee that during the 84th Congress, 1st session, such a proposal may receive the consideration it deserves.

Currently, the nearest relief for independent dealers seems tied to the pending quantity-limit discount ruling which is in litigation. Court approval of this ruling would go a long way toward balancing the competitive scales among independent dealers of all sizes and between independent dealers and mass-merchandising outlets. Its effect

[3] National Independent, vol. 14, No. 9, January 1955.

on the discounts given to and prices quoted by manufacturer-owned stores is, however, open to serious question. The quantity-limit discount ruling applies to purchasers. It is the understanding of your committee that tires moving from a manufacturer to its own store are considered as merchandise on consignment to which the quantity-limit discount ruling would not apply. That this interpretation was contemplated by the Federal Trade Commission seems clear. The request the Commission made for data from the rubber companies precedent to its hearings on the rule asked the manufacturers for information on their number of purchasers by volume exclusive of Federal, State, and political subdivisions, and manufacturer-controlled retail outlets. Your committee feels that the exclusion of company stores in the quantity-limit discount ruling is a loophole in the order's general effectiveness which requires further study by the Federal Trade Commission. It is also to be hoped that the Department of Justice will do all within its power to expedite court action on this case which is so vital to the welfare of small-business men.

Your committee also has concluded that company stores enjoy an additional and unmerited advantage over independent dealers arising from the circumstance that the stores are not purchasers but consignees. The manufacturers' excise tax on rubber tires is 5 cents a pound and on tubes 9 cents a pound. Manufacturers pass this tax on to the dealers, collecting from dealers when the merchandise is invoiced and title to the tires and tubes changes hands. In the case of company stores, however, the tax is not paid until a sale is made to a consumer because the company stores receive the merchandise as a consignee. This manufacturers' tax, therefore, bites into the slender working capital resources of the small dealer without similar effect on the company-owned stores. To your committee this specific competitive advantage is unfair and is a subject which unquestionably requires further study.

Your committee is inclined to the belief that a more aggressive enforcement of the price-discrimination clauses of the Robinson-Patman Act would go a long way toward ameliorating the price-cost squeeze which today is hurting many retailers. A recent announcement of Edward F. Howrey, Chairman of the Federal Trade Commission, to the effect that a survey of compliance by industry with the Commission's cease-and-desist orders revealed flagrant violations. While not unmindful of the large assignment facing the Commission, your committee has long felt that a more vigorous policing of cease-and-desist orders would be of incalculable benefit to small business in general. In the rubber-tire field the consent decrees entered by United States Rubber in 1939 stands as a landmark. In this case the Federal Trade Commission had ordered United States Rubber to cease and desist from selling at discriminatory prices, especially where sales through company-controlled outlets to large commercial accounts injured competition between the respondent and retail tire dealers competing with company stores. To the knowledge of your committee, in the intervening 15 years the Commission has made no active field investigation of the extent to which United States Rubber has complied with the terms of the consent decree. Such an investigation at this time might have salutory results throughout the industry.

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Section D. Small Airlines and Civil Aviation Policy

Your committee's last annual report (S. Rept. 1092, 83d Cong., 2d sess.) devoted much attention to the role of small airlines in civil aviation policy. It also reviewed the Senate Small Business Committee's report on the Future of Irregular Airlines (S. Rept. 822, 83d Cong.) which called upon the Senate Interstate and Foreign Commerce Committee to initiate a study of the administration of the Civil Aeronautics Act by the Civil Aeronautics Board. Your committee wishes at this point to commend the Commerce group for its extensive hearings on this subject during 1954.

During 1954, your committee held no formal hearings in this field but watched developments with keen interest. The Senate Small Business Committee retains its position that small airlines are important to the Nation and it will study their problems during the 84th Congress.

Section E. Concentration in the Banking Industry

The concern of Congress with maintaining the Nation's banks on a competitive and nonconcentrated basis was expressed as early as 1914, when the Clayton Act imposed on the Federal Reserve System the duty of policing prohibitions against stock acquisitions of banks whenever such acquisitions might lessen banking competition or tend toward monopoly.

Historically, the banking structure of the United States has comfortably accommodated both large and small banks. That situation also prevails today. Your committee, however, has discerned in recent years a tendency toward concentration in the banking field whereby a decreasing percentage of banking business is being transacted by separate and independently managed banks. Because one of the primary problems of all small businesses is their ability or failure to secure capital at equitable rates of interest, the question of concentration of banking facilities is one which should be watched closely for danger signals.

At the request of your committee, the Board of Governors of the Federal Reserve System in August 1952 provided the committee with a comprehensive report on Concentration of Banking in the United States.[9] This report showed that for many years not only has the number of branches increased relatively faster than the number of banks but the number of banks has steadily declined since the early 1920's. This trend, coupled with a continuing rate of bank mergers, especially in large cities, prompted your committee to request a supplemental report on concentration in banking to up-date through 1954 the data furnished the committee in mid-1952.

It is apparent that there has been no reversal in the trend toward fewer banks and more branches. The number of banks has curved downward from 14,618 at the close of 1951 to 14,364 at the end of 1954. While it is true that new banks continue to be organized, during the past 3 years the average annual rate has been 69 compared with 70 during the 10-year period 1942–51. It should also be noted that these newly established banks have been more than offset by

[9] Senate Select Committee on Small Business. Committee Print No. 7, 82d Cong., 2d sess.

mergers and absorptions, with the consequent conversion of many independent banks into branches. The following table shows the slightly stepped-up rate of consolidations and absorptions during the past 3 years compared with the rate for the 10-year period 1942–51.

	Total, 1934–54	1934–35	1936–41	1942–51	1952–54 [1]
Number of banks, beginning of period	15,029	15,029	15,869	14,825	14,618
New banks organized	1,907	612	291	797	207
Reopenings of suspended and nonlicensed banks	869	839	26	1	3
Mergers and absorptions	−2,411	−391	−756	−841	−423
Suspensions	−354	−91	−230	−23	−10
Voluntary liquidations	−825	−195	−337	−264	−29
Other changes [2]	149	66	−38	123	−2
Number of banks, end of period	[1] 14,364	15,869	14,825	14,618	14,364

[1] 1954 figures preliminary.
[2] Includes a net addition of 115 banks due to revision of the statistical series in 1947.

Since 1951, the number of branches of commercial banks has increased from 4,994 to 6,103, and of all banks from 5,224 to 6,411. During the same 3-year period, some 70 percent of all branches established resulted in new banking facilities; the remaining 30 percent were established by the conversion of banks into branches. About three-fifths of the newly established branches served communities beyond the main-office city of the parent bank—a slightly lower percentage than in the years prior to 1951.

It is a fact that the rate of bank mergers has been accelerated since mid-1952. The annual average of mergers, consolidations, and absorptions for the period from 1938 through 1951 was 88 for commercial banks. The following table shows the increase in mergers by asset size of the institutions involved for the periods January 1, 1950, through June 30, 1952, and from July 1, 1952, through December 31, 1954.

	Number of banks absorbed, merged, or consolidated	
	Jan. 1, 1950, to June 30, 1952	July 1, 1952, to Dec. 31, 1954
Asset size of banks which were absorbed by, or were merged or consolidated with, large institutions (in millions of dollars):		
Under 2	7	20
2 to 5	17	37
5 to 10	21	51
10 to 25	26	40
25 to 50	6	16
50 to 100	7	10
Over 100	7	9
Total	91	183

Despite the increased rate of concentration in banking, your committee notes that the Nation's 100 largest banks have not in recent years increased in size at as rapid a rate as smaller banks. From 1951 through midyear of 1954, the 100 largest banks increased their deposits from $76,565 million to $79,953 million for an increase of 4 percent. All other commercial banks increased their total deposits from $88,275 million to $94,115 million for an increase of 7 percent.

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The following table shows that more than 4,850 banks, or 36 percent of the total, had deposits of less than $2 million and the aggregate of their assets was only 3 percent of total assets. On the other hand, 413 banks, or 3 percent of the total, held deposits of over $50 million which accounted for 63 percent of total assets.

Number and total assets of insured commercial banks, 1953

Size group (deposits, in millions of dollars)	Number of insured commercial banks		Total assets	
	Number	Percent of total	Amount	Percent of total
			Millions	
1 or less	1,829	13.7	1,385	0.7
1 to 2	3,021	22.6	4,762	2.5
2 to 5	4,438	33.2	15,233	8.0
5 to 10	2,042	15.3	15,226	8.0
10 to 25	1,233	9.2	19,782	10.4
25 to 50	383	2.9	13,968	7.4
50 to 100	189	1.4	13,949	7.4
100 to 500	183	1.4	40,191	21.2
More than 500	41	.3	65,255	34.4
Total	13,359	100.0	189,751	100.0

Source: FDIC annual report, table 112.

In view of the importance of adequate banking facilities to small-business men, your committee intends to pay very close attention to the future rate of banking concentration and the small-business implications of any changes in this rate.

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CHAPTER V

DISTRIBUTIVE TRADES

Section A. Price Wars in the Gasoline Industry

Ever since the Small Business Committee was established on a permanent basis in 1950, it has been asked to intervene in situations dealing with the relationships among gasoline service stations, distributors of petroleum products, and the major integrated oil companies. Surveys have been made of the shortages of heating oil in New England, of the fuel-oil supply in Chicago, and the distribution of petroleum products on the west coast.

Throughout this period of 5 years, your committee has also worked informally in an attempt to find solutions to the serious gasoline price wars which have plagued service stations in all parts of the United States. Particularly virulent have appeared the price wars in New Jersey, which is vulnerable to these outbreaks because of the location of so many major refineries in the area, and because of its tremendous marketing potential. The independent gasoline retailers in New Jersey, as elsewhere, have tried all sorts of approaches to solve these recurrent campaigns which always spell disaster to many of the independent dealers. They have gone to the State legislature for laws limiting the size of signs which can be posted at service stations listing the price of gasoline; they have asked for legislation which prohibited selling gas without a certain percentage markup above cost. Naturally, they have also asked the Federal Trade Commission to step in under its Robinson-Patman Act authority to forbid discriminatory pricing practices by the major oil companies or their affiliated service stations.

None of these steps, however, has proven to be effective, and each year hundreds of service stations in New Jersey change hands as some small-business man loses his stake and is forced to the wall by better financed retail outlets. Therefore, your committee has felt it had an obligation to investigate the situation to determine what action could be undertaken to alleviate a very serious problem area. In this instance, the committee has confined its activities to New Jersey, but it will certainly extend its probe to other States if it is successful in its first endeavor.

As its initial move, the chairman of your committee addressed a letter to the president of each of the 12 major oil companies doing business in New Jersey, explaining that the committee was deeply concerned with the continuing price wars in gasoline sales. Senator Thye said that—

> **In the preliminary phase of its assignment, the committee has decided to explore the marketing relationships which exist between the major oil companies and the service operators whom they supply * * * It is to be hoped that this undertaking will result in the alleviation of the critical situation confronting the independent operators.**

With his letter, the chairman transmitted a 14-point questionnaire seeking statistical data and other pertinent information on the methods of operation employed by the oil companies. Without exception, the response of the oil companies to this approach has been gratifying. Every one of those addressed has pledged his cooperation and has promised to work with the committee in meeting a problem which naturally was of vital concern to the companies.

All the 12 companies have now compiled the information requested in the questionnaire which was sent out on December 6, 1954. No summary has as yet been made of the answers received by the committee and no release will be made until all, or substantially all, of the replies have been analyzed. The one important fact which has shown up in all the answers, however, indicates that the rate of turnover in service-station owners or lessees is substantially higher than the rates for retailers in other lines of business. Your committee trusts, in the words of Senator Thye, that—

> all interested parties will strive in a spirit of good faith to devise a sound and equitable solution to the independent operators' gravest competitive peril, the gasoline price war.

Section B. Fair Trade Developments During 1954

In its last annual report your committee concluded that the battle over resale price maintenance or fair-trade laws was being fought in the courts of the various States after protracted campaigns in the Congress of the United States and the several State legislatures. To a certain extent, 1954 followed the pattern of 1953, and no fewer than 11 State courts ruled upon the constitutionality of their fair-trade laws.

On the other hand, a more basic attack is now being made against the fair-trade laws, one of which has been underway for years, but which is now at unparalleled peaks of intensity with greater forces than ever being thrown into both camps. Basically the present war concerns the ability of the laws and those favoring fair trade to defeat retail outlets which cut prices on fair-traded merchandise.

During a period when consumer items are in short supply, price cutters do not constitute a real threat to established stores, but when the manufacturer and his distributors find that regular outlets are not moving all the output, much economic pressure inevitably exists to allow the surplus to fall into other channels. Furthermore this trend is accentuated when potential buyers of appliances, jewelry, and other nationally branded merchandise become particularly price conscious and are willing to forego the extra services offered by standard sellers in favor of the price differential offered by the discounter. Both these factors were present during 1954 when the shortages induced by the Korean war came to an end and the economic recession combined to lure customers out of the department stores, the appliance and jewelry shops, and direct them to the price cutters.

Various estimates have been made of the extent to which these discount houses have made inroads into more normal retail outlets. Spokesmen for the Toy Manufacturers' Association and the National Retail Dry Goods Association, both of which operate in areas especially vulnerable to the competition of discounters, have provided your committee with their guess that the total sales volume of dis-

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count houses is about $5 billion. On the other hand, the United States Chamber of Commerce has given a figure of $25 billion, or five times as great, as its best guess of the extent of business being done by these outlets, most of whose business is done in fair-traded items. On this point, incidentally, the American Fair Trade Council feels that over 80 percent of the discount houses' revenue comes from price-fixed merchandise, and there seems to be no reason to doubt that the 80 percent figure is close to the mark.

Your committee, however, has no means and no data by which it could come to a decision on the relative reliability of either the $5 billion or $25 billion annual revenue estimate. Since it is generally agreed that only 10 percent of total retail sales in the Nation are in fair-traded goods, the total amount of such business would come to about $18.7 billion with total sales of $187 billion. Therefore, it would seem that the chamber of commerce figure overstates the income of the discounter, but your committee is unable to find any mutually agreed upon level between the $5 billion and $25 billion estimates. Naturally, precise information is not available, since the discount houses do not file reports with any agency of the Government or with any private association regarding the extent of their sales.

Even with that degree of statistical uncertainty, though, it is apparent that discounters do account for a sizable share of the retailing pie. Furthermore, any increase in their sales during the coming year which even closely approximates the growth of the past 12 months will undoubtedly provide a most definite and pragmatic answer to the question of what happens next in the fair-trade puzzle. In the opinion of your committee, a more serious challenge to the fair-trade laws than was ever presented by any court decision arises in the shape of these ever-expanding operations of discount houses located in those States which have resale-price-maintenance laws.

Based on current observations, your committee concludes that favorable court actions against individual price cutters have proved ineffective in halting such retail outlets. While protracted litigation was under way which was aimed at forcing 1 operator to respect the fair-trade price of 1 manufacturer's articles, hundreds and thousands of discount houses were cutting prices on hundreds and thousands of fair-traded articles.

If fair-trade laws are ever to be effective, it is now obvious that their proponents must do more than file suits in State courts. A full-scale counterattack would have to be launched with the full backing and cooperation of the manufacturer, his distributors, and the retailers themselves to police the channeling of fair-priced articles from the assembly line into the homes of the customers. It will certainly be an uphill fight, and recent experiences in other fields where control of distribution is more tightly controlled, such as the protests against the "bootlegging" of new cars, do not augur well for an easy victory over price cutters dealing in merchandise which often goes through many hands before it reaches the retailer.

Every manufacturer having a fair-trade program should recognize and be prepared to fulfill the many obligations to others which the fair-trade system imposes. Satisfactory discharge of this responsibility is the justification for his continued participation in the system. This means that the manufacturer, in addition to having a product adaptable to fair-trade competition, must formulate an en-

forcement policy which is both equitable and just and which in diligent and resolute application will reflect credit upon himself and fair trade. Should the manufacturer be unable to measure up to what is required of him, he must promptly abandon his fair-trade contracts. Good intentions alone are inadequate—the manufacturer can discharge his responsibility only by meticulous attention to and vigorous defense of his trust.

Wholesalers have a unique place in the plan of fair-trade competition. They are the channels through which fair-traded goods pass from the manufacturer to the retailers. Upon these middlemen lies the responsibility, generally by contract, but otherwise morally, of preventing one retailer from obtaining an unfair advantage over his competitors, as a result of the abuse of the fair-trade principle. Enforcement is the duty of wholesaler, too, particularly in the case where the fair-trade program is established by him in behalf of the manufacturer.

Retailers who have signed fair-trade contracts or who abide by fair-trade principles must realize that they also have a duty to each other not to cheat in selling fair-traded goods. Their enforcement responsibilities are somewhat restricted by their lack of resources in both time and money and by the unfavorable public impression created by the retailer who seeks to stop a competitor from offering loss-leader bargains. But they should exercise their rights to enforce fair-trade contracts whenever possible. Perhaps in some cases this will mean joining with one or more other retailers in order to share litigation expenses. However, the Justice Department has been inclined to feel that such combinations are illegal and any concerted attack in this field must be carefully conceived and carried out.

The increasing tendency for the entire concept of fair trade to be questioned by influential members of the public is another problem which must be faced by its proponents. For example, in a recent decision upholding the constitutionality of the New Jersey Fair Trade Act, Judge Heher of the State supreme court offered in his concurring opinion an admonition deserving of serious reflection by fair-traders. The judge, after defining the issue of the case before him as—

> the inquiry here is whether the State law comports with the security given by our own constitution to the general principle of freedom of trade—

stated that:

> There is now reason to believe that the fair-trade principle is used by distributors as a device to stifle price competition, in the name of protection to the producer's property right in his trade-mark, ostensibly to serve the producer's interest, but in reality for their own gain, and such is perforce an arbitrary and unreasonable regulation of the nonsigner's business and a delegation of the legislative power in violation of our own constitution. The record does not show that such is the case here. * * *[1]

In this respect, the judge may have been influenced by the popularity being achieved by some discount houses, one of which was a party to the instant case. Some support for this is found in the judge's further intimation that the time has come for a—

> legislative reassessment of the policy in the context of prevailing trade practices and concepts and the teachings of experience.

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[1] *Lionel Corp.* v. *Grayson-Robinson Stores* (1954) (15 N. J. 191; 104 A. 2d 307) (motion granted by the U. S. Supreme Court to dismiss appeal for want of a substantial Federal question, 23 L. W. 3110).

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But whether the judge saw in discount-house operations a form of enterprise deserving of legal status or a breaking down of fair-trade competition, the significance of his remarks lies in the fact that he was obviously troubled by doubts as to the manner in which the public interest was being served by fair-traders.

Your committee has already noted that combinations of retailers to enforce fair-trade principles have been ruled illegal. Therefore, the following suggestion by one who has served on the Federal Trade Commission may be helpful.

Mr. Albert Carretta, in an address before the Toy Manufacturers' Association, found in the toleration of discount-house operations an abuse of the fair-trade principle warranting Government intervention under certain conditions. Mr. Carretta summarized the situation confronting fair-traders in this vein:

> It appears to me that the problem * * * is one which may very well be presented to the Commission for its consideration. In your industry, as I understand it, manufacturers sometimes enter into fair trade agreements with certain distributors and then subsequently seek enforcement of the minimum resale price provisions of such agreements. I have been advised that sometimes the same manufacturers sell to discount houses which are in competition with such distributors, and then subsequently do nothing to compel compliance by the discount houses with the minimum resale price provisions of the fair trade agreements of which the discount houses have knowledge. If this is a fact, the important question is: "Is it an unfair act or practice in violation of the Federal Trade Commission Act for a manufacturer to sell his merchandise to competing distributors and then subsequently to seek enforcement of the minimum resale price provision of a fair trade agreement only against some of his distributors?" [2]

This question was answered affirmatively by Mr. Carretta, who expressed his opinion that the FTC does have the legislative authority "to intervene and enjoin such discriminatory practice," and, in doing so, would "only be seeking equal treatment of all distributors of the same manufacturer."

A relatively recent development in the effort to meet the competition of discount houses selling fair-traded items at less than their stipulated prices has been the attempt by large department stores in several localities to beat the discounters at their own game. By advertising extensively that they will meet or better any prices offered by the discount houses, these large retailing outlets have apparently sold at levels which will allow them little or no markup in the hope that the less well-financed price cutters will be forced out of business.

Probably the first such counterattack was launched by three of the largest department stores in St. Louis. There was no legal question involved in this case, since Missouri does not have a State resale price maintenance law, but the pattern has spread to cities where State fair-trade laws are on the books.

While it is too early for your committee to assess the final outcome, or even the present impact, of this strategy, it is already apparent that a familiar figure emerges as a certain casualty of the war. He is, of course, the smaller retailer, usually handling only one line of merchandise, who does not have the resources to survive on small or nonexistent markups. The typical camera shop, toy store, radio and television

[2] Speech, entitled "What Retailers and Their Trade Associations Can Do About Fair Trade and Discount Houses," by Hon. Albert A. Carretta, member of the Federal Trade Commission before the American National Retail Jewelers Association at a meeting in New York City on August 11, 1954.

dealer, jewelry store, are all likely victims, since they have higher overhead costs than the discounters to cover their inventories, repair facilities, and other services. Furthermore, the department store also must bear these higher costs of doing business, and it appears likely that any discount house which has enough capital, low overhead, and a steady flow of nationally advertised, fast turnover merchandise will be able to outwait the department store in such a struggle, even though the latter's sales of such goods are only a small fraction of its total sales.

In a recent announcement, the National Retail Dry Goods Association laid down an ultimatum to fair traders: enforce or abandon your contracts.[3] This declaration was prompted by the result of an association survey which revealed that members could not continue to abide by fair-trade contracts while the "discount house evil" was gaining at their expense.

Your committee feels that this phase of the entire fair-trade situation is of such importance to the small-business community that it should be studied closely during the coming months to determine if a real threat exists to the continued survival of thousands of small merchants throughout the United States.

Any appraisal of the status of fair-trade competition would be incomplete without a review of developments during 1954 in the courts and legislatures.

Developments in the Courts

At the start of 1954, fair-trade forces could not hide a trace of pessimism. Of course, they happily pointed out that resale price-maintenance laws were valid and wholly operative in 42 States and that the McGuire Act was successfully resisting such legal assaults as were being made upon it. Yet, they exhibited an unusual reserve in noting that the operative effect of fair-trade laws was either curtailed or terminated in three States: Florida, Georgia, and Michigan.

During 1949, the Supreme Court of Florida ruled the State's resale price maintenance law to be inoperative for nonsigners of fair-trade contracts, inasmuch as the law was a price-fixing measure prohibited by the due process clause of the Florida constitution.[4] In Georgia, the Fair Trade Act had been voided in a State supreme court decision, notable for the alternate grounds upon which its ruling was predicated. In addition to finding a fatal conflict between the act and the due-process clause of the State constitution, the court held that the act as a purported regulation of interstate commerce was void "ab initio." Since the act was enacted prior to the Miller-Tydings amendment, it was, insofar as it was designed to affect the prices at which goods moving in interstate commerce could be resold, in patent conflict with the provisions of a superior law, the Sherman Antitrust Act, and was, as well, an unconstitutional attempt by a State to invade an area of regulation, that of interstate commerce, exclusively assigned by the United States Consitution to Congress.[5]

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[3] Washington Star, January 3, 1954.
[4] *Liquor Store, Inc.* v. *Distilling Corp.* ((1949) (Fla.) 40 So. 2d 371).
[5] *Grayson-Robinson Stores* v. *Oneida Limited* ((1953) 209 Ga. 613; 75 S. E. 2d 161; cert. den. (1953) 346 U. S. 823, affirming (U. S. district court, La.) (1953) 109 F. Supp. 269).

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The status of the Michigan Fair Trade Act was uncertain about signers of fair-trade contracts, but definitely inoperative for nonsigners, because, in that respect, it was violative of the due process clause of the Michigan constitution.[6]

There was also some apprehension over the array of cases pending before the United States Supreme Court in which were alleged certain constitutional issues of the same fateful character as that resolved in the Schwegmann case.[7]

As the year of 1954 closed, however, fair-trade forces could congratulate themselves for having weathered a rigorous year, as the following survey of cases involving constitutional issues will show—

1. In *Arkansas*, the State resale price maintenance law was ruled to be invalid for nonsigners of fair-trade contracts. The rationale of this case was that, as applied to nonsigners, the law constituted a denial of that due process secured by the State constitution.[8]

In a decision by a Federal court, the Arkansas act was held not to be violative of the 14th amendment, even for nonsigners. Thus, for students of constitutional law, an interesting problem is presented: how Arkansas fair-trade law can, on grounds of denial of due process, be violative of the State but not of the Federal Constitution.[9] The language respecting due process, as found in both constitutions, seems markedly similar.

2. In *Delaware*, an appellate court in the first judicial appraisal of the State's Fair Trade Act found the provisions of the law to be consistent with that due process guaranteed by the Delaware constitution.[10] The reasoning of the court was remarkably similar to that of the United States Supreme Court in the celebrated Old Dearborn case.[11]

3. In *Florida*, the State's resale price maintenance law,[12] as reenacted for the third time, was again ruled to be invalid insofar as it purported to apply to nonsigners of fair-trade contracts. The Supreme Court of Florida declared that the real effect of the nonsigners' clause of the act was "anticompetitive price fixing" and not the protection of goodwill in trade-marked products.[13] In a separate concurring opinion, one justice asserted that the act's findings of fact and declaration of necessity as to the State's economic policy, as contained in a prefatory paragraph of the act, were "contrary to proved and fairly established truths."

To complete the picture, it should be noted that the State supreme court subsequently declined to review a lower court decision holding the Florida act valid and operative as to signers of fair-trade con-

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[6] *Shakespeare Co.* v. *Lippman's Tool Sporting Goods Co.* ((1952) 334 Mich. 109; 54 N. W. 2d 268).

[7] *Schwegmann Bros. et al.* v. *Calvert Distillers Corp.* (1951) 341 U. S. 384).

[8] *Union Carbide & Carbon Corp.* v. *White River Distributors, Inc.* ((1954) Ark. Chan. Court, Independence County, 1954 Trade Cases, par. 67781). [On February 7, 1955, the Arkansas Supreme Court held that the nonsigner provisions of the Arkansas Fair Trade Act were violative of the State constitution's due process clause. *Union Carbide & Carbon Corp.* v. *White River Distributors, Inc.*, 23 LW 2416.]

[9] *Union Carbide & Carbon Co.* v. *White River Distributors, Inc.* ((1954) 118 F. Supp. 541).

[10] *General Electric Co.* v. *Philip Klein, T. A. Phil's Distributors* ((1954) 106 A. 2d 205).

[11] *Old Dearborn Distributing Co.* v. *Seagram's Distillers Corp.* ((1936) 299 U. S. 183).

[12] Stat. Ann. (Supp. 1952), secs. 541.001–541.09.

[13] *Miles Laboratories, Inc.* v. *Eckerd* ((1954) 73 So. 2d 680); *Sterling Drug* v. *Eckerd's of Tampa* ((1954) 71 So. 2d 156).

tracts.[14] Thus, in Florida, fair-trade competition has the same status as it did in all fair-trade States following the Schwegmann decision.

4. In *Georgia*, a suit testing the constitutionality of the reenacted Fair Trade Act resulted in a decision upholding its validity.[15] An early ruling on the pending appeal to the State supreme court is expected.

It may be noted that a brief amicus curiae was filed with the Georgia Supreme Court by 15 companies and trade associations. The brief consists largely of a study, entitled "Economic Aspect of Resale Price Maintenance," written by Dr. Gordon Siefkin, professor of economics and dean of the school of business administration at Emory University. Dr. Siefkin's thesis is that the principle of fair-trade competition is "compatible with the kind of competition from which the consumer benefits."

5. In *Louisiana*, a lower State court refused to follow the reasoning of the Georgia Supreme Court, as enunciated in the publicized Grayson-Robinson case, a decision wherein it was maintained that application of the State fair-trade law to nonsigners selling goods moving in interstate commerce was invalid; the passage of the McGuire Act notwithstanding, unless the State act was first reenacted. The court ruled that the Fair Trade Act was under no State constitutional disability.[16]

6. In *Mississippi*, a Federal court ruled that the question of whether the McGuire Act extended application of preexisting fair-trade acts to nonsigners in interstate commerce or whether, in order to be effective, such statutes must of necessity be reenacted by the State legislative body, is a matter for the State supreme court to resolve.[17] From this, it would seem that the principles laid down in Georgia's Grayson-Robinson case will soon be propounded before the Mississippi Supreme Court. At the same time the conflicting rationale of the New Jersey case of *Lionel Corp.* v. *Grayson-Robinson Stores, Inc.*, will also be at issue.[18]

7. In *Nebraska*, the State's Fair Trade Act was held by a lower court to be invalid on account of a fatal duplicity in its title. The court also ruled that the act constituted an improper exercise of the State's police power.[19] An appeal of this case is pending before the Nebraska Supreme Court, which has not yet passed upon the validity of the act.

8. In *New Jersey*, the State supreme court rendered a decision upholding for the fourth time the constitutionality of the State's Fair Trade Act. Citing as authority the Old Dearborn case, the court asserted that the New Jersey Fair Trade Act does not violate the due process and equal protection clauses of the Federal and New Jersey constitutions. Moreover, the court held that there is no

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[14] *Sunbeam Corp.* v. *Chase and Sherman, Inc.* (Florida), ((1953) Circuit Court, Dade County, 1953 Trade Cases, par. 67524; cert. den. without opinion (1954), 73 So. (2d) 714).

[15] *General Electric Co.* v. *Cox-Gardiner Furniture Co.* (1954). [The nonsigner clause of the Georgia Fair Trade Act was held to be violative of the Georgia constitution as a denial of due process. *General Electric Co.* v. *Cox-Gardiner Furniture Co.*, 23 LW 2360.]

[16] Civil District Court. *Dr. G. H. Tichenor Antiseptic Co.* v. *Schwegmann Bros. Giant Supermarket* (1954 Trade Cases, par. 67773).

[17] *Elgin National Watch Co.* v. *Barrett* ((1954) 213 F. 2d 776).

[18] See footnote 1.

[19] *General Electric Co.* v. *J. L. Brandeis & Sons* (1954 Trade Cases, par. 6768.) [On February 11, 1955, the Nebraska Supreme Court held that the nonsigner provisions of the Nebraska Fair Trade Act were violative of the State constitution's due process and privileges and immunities clause. *McGraw Electric Co.* v. *Lewis & Smith Drug Co., Inc.*; *General Electric Co.* v. *J. L. Brandies & Sons*, 23 LW 2430.]

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improper delegation of legislative power in the provisions of the act under either the State or Federal Constitutions.[18]

9. In *New York*, in the sixth attack to date upon the constitutionality of the State's act, the court of appeals, New York's highest State court, reasoning as did the New Jersey court, declared that the act was consonant with State and Federal due process and did not deny equal protection of the laws in violation of either the State or Federal Constitutions. The court further ruled that the New York act does not constitute an unlawful delegation of legislative power to private persons in derogation of either the State or Federal Constitutions.[20] The court also rejected, as did the New Jersey court previously, the so-called Grayson-Robinson doctrine.

10. In *Utah*, the State's act was held to be violative of the Utah constitution by trial court.[21] No written opinion was rendered. An appeal of this decision is pending.

11. In *Washington*, the Superior Court of King County refused to apply the so-called Grayson-Robinson doctrine and ruled that the State's Fair Trade Act was valid under the State constitution.[22]

Of especial significance to fair-traders was the refusal of the United States Supreme Court to review three cases attacking the constitutionality of State resale price maintenance laws.[23] This action left unaffected the High Court's decision of 1936 that fair trade acts do not contravene the provisions of the United States Constitution.[24] The Supreme Court also denied an application for writ of certiorari in each of two other so-called fair-trade cases, which sought to challenge the constitutionality of the Federal enabling law, the McGuire Act.[25]

During 1954, legal victories in important test cases largely offset the defeats suffered by fair-trade forces. A total of 42 States still have valid resale price-maintenance laws. However, in the case of two States, Georgia and Florida, it could be that the restorative work on fair-trade work being done by the State legislatures may not be able much longer to keep pace with the adverse decisions of the State judiciary.

DEVELOPMENTS IN STATE LEGISLATURES

On January 6, 1954, the Governor of Georgia signed a new resale-price-maintenance law for his State. In contrast to the previously voided act, the new law contains a prefatory declaration of Georgia's public policy respecting—

> property rights, trade-marks, good will, and the right and freedom to contract, and to exercise the police power of the State so as to forbid the conduct of business in such manner as to infringe the equal rights of others, and to protect the general interest against [monopolistic] * * * practices.[26]

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[18] See footnote 1.

[20] *General Electric Co.* v. *Masters, Inc.*; *Lionel Corp.* v. *S. Klein on the Square, Inc.*; *Razor Corp.* v. *Goody* ((1954) 307 N. Y. 229; 120 N. E. 2d 802; cert. den., 23 LW 3111, 3150).

[21] Superior Court, King County, *Elgin National Watch Co.* v. *Druxman* (1953 Trade Trade Cases, par. 67861).

[22] Superior Court, King County, *Elgin National Watch Co.* v. *Druxman* (1953 Trade Cases, par. 67948).

[23] *Grayson-Robinson Stores, Inc.*, v. *Lionel Corp.* ((1954) 348 U. S. 859, Doc. No. 312); *S. Klein on the Square, Inc.*, v. *Lionel Corp.* ((1954) 348 U. S. 860, Doc. No. 326); *Masters, Inc.*, v. *General Electric Co.* ((1954) 348 U. S. 892, Doc. No. 383).

[24] See footnote 11.

[25] *Sam Goody* v. *Razor Corp., Socia Sales Corp., and Capital Records, Inc.* ((1954) 348 U. S. 863, Doc. No. 327); *S. Klein on the Square, Inc.*, v. *Lionel Corp.* ((1954) 248 U. S. 863, Doc. No. 324).

[26] Georgia Laws of 1953, Act No. 853, approved and effective January 6, 1954.

Another significant feature found in the new law and not in the old is a section setting forth eight legislative findings, including that the public interest and general well-being of the State will best be served by resale price maintenance and that the enactment of the law is to be construed as an exercise of the police power to enhance the general well-being of Georgia citizens and protect the right to enter into private contracts.

The purpose of these innovations, it seems, is to convince the Georgia Supreme Court that the act authorizes resale price maintenance only for "business affected with a public interest," the limitation upon price-fixing activities established in the Grayson-Robinson case. It may be, however, that the legislative findings will persuade the Georgia Supreme Court to acknowledge, as the United States Supreme Court has done, that there is a reasonable relation between resale price maintenance and the legitimate objects of the police power, namely, the health, morals, safety, and general welfare of the citizens of the State.

In Louisiana, a bill to repeal the State's fair-trade law was introduced in the legislature. An interesting sidelight to legislative consideration of the measure was the efforts of partisan groups to represent the public sentiment as favorable to their position. Mr. John Schwegmann, a freetrader in support of the bill, ran advertisements in the New Orleans newspapers inviting all interested persons to be his guests on a bus trip to Baton Rouge, the State capital. Forty or fifty people accepted Mr. Schwegmann's invitation and attended committee hearings on the bill. To offset the possible effects of Mr. Schwegmann's demonstration, the American Fair Trade Council conducted a survey which was said to show that 63.3 percent of the housewives in Louisiana favored fair-trade competition. This conclusion was drawn from a poll of some 2,748 housewives in the State. The bill failed of passage by the Louisiana Legislature.

In the Congress of the United States, bills to establish a Fair Trade Act for the District of Columbia were introduced in both Houses early in the 2d session of the 83d Congress. Three days of public hearings on S. 3297 were held by a special subcommittee of the District of Columbia Committee. Some 43 witnesses were heard, both in support of the bill and in opposition to it. A statement submitted by the Department of Justice was condemnatory of the proposed legislation, but Mr. Earl Kintner, General Counsel of the Federal Trade Commission, appeared before the Senate subcommittee expressing support of the bill. A survey assertedly taken to acquaint the legislators with the attitude of District of Columbia housewives on fair-trade competition showed 80.3 percent of them favoring it. The conclusion of this survey was based upon the polling of 2,150 housewives living within the District boundaries.

Section C. Couponing and Cross-Couponing Practices

A relatively new competitive device in promoting retail sales which has arisen in the 10 years since the end of World War II, involves the distribution of coupons which can be redeemed for discounts on the cost of certain items. Earlier promotional campaigns had utilized the appeal of premiums, gifts, or other sorts of prizes which brought out in the shoppers of the Nation the desire to get "something for

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nothing." Coupons, however, were somewhat more simple, since they were as good as legal tender on the purchase of specified commodities. Such scrip was either distributed in direct mailing campaigns or was contained in the package of other products of the same manufacturer or food processor.

No matter what the means of distribution, however, these coupons were merely a form of price cutting to the consumers of a certain area, whether it be in 1 city, 1 State, or in 1 section of the United States. Naturally, only relatively large organizations could embark upon such costly promotional stunts, and these were usually corporations doing business in all parts of the country, so that they could make up for their losses, or the loss of profits, in one part of their market with business-as-usual in their other territories.

It is obvious to the most casual observer that any competing product which has to withstand the pressure of extensive or prolonged price cutting in the form of free coupons by a well-financed corporation is in for serious trouble. Up until this time, no full study has been made of the results upon competition of the postwar wave of couponing drives, but even the briefest conversations with retailers or small manufacturers handling merchandise which is subject to couponing indicates the seriousness of the problem and its possible ramifications.

In the last 2 or 3 years, though, your committee has noted with dismay the rise of an even more insidious form of couponing, which can be termed "cross-couponing." The mechanics of cross-couponing are simple. A manufacturer or processor issues with every sale of his product a coupon of fixed value which may be redeemed by the customer only upon the purchase of a specified product made by another participating company. Through cross-couponing, two or more unaffiliated companies are able to pool their resources and share in the undoubted benefits resulting from a couponing campaign at an expense only slightly greater than that which would be incurred by either in conducting his own promotion. It seems that regular, individual couponing was so successful that some enterprising merchandiser was prompted to adapt it to the use of several producers.

As with simple couponing, cross-couponing is a form of price cutting. The price reduction of the products couponed takes place upon the redemption of the coupon. Cross-couponing is also a method of effecting a tie-in sale. The tie-in sale is set up by making the price reduction represented by the coupon conditional upon the customer's purchase of the products specified. In this latter respect, however, as well as by virtue of the joint undertaking involved in cross-couponing, the practice may be distinguished from simple couponing.

About 2 years ago the cross-couponing practice began to be used extensively by some manufacturers of such products as flour, cereals, gelatins, and soaps. In grocery stores throughout the Nation the efficacy of the practice was soon demonstrated by way of an increase in sales of the products of the participating companies. Other companies were prompt in adopting the practice for promotion of their products. Not much time passed before your committee was apprised of the success being enjoyed by companies using the cross-couponing practice. Small competitors in those fields in which cross-couponing was being employed complained to the committee that they were suffering a detriment roughly corresponding to the benefit accruing to

the companies participating in the practice. In the numerous complaints received by the committee, the adverse effects of cross-couponing upon small competitors were described as being similar to those produced by regular couponing, the only variance being in degree of severity. During the course of either type of coupon campaign the products of affected small competitors do not sell as well as under normal competitive conditions, if indeed they sell at all. As the small manufacturer's products lie unsold on the grocer's shelves during a campaign, the customary distribution flow is interrupted with serious consequences. When grocers' stocks are unmoved, the jobber's inventories accumulate and production must in turn be reduced. Moreover, when the campaign ends, the manufacturer finds it difficult to move his products because many of his former customers have lost interest in his product. In the case of a cross-couponing campaign, these injurious effects upon small competitors are more serious, largely because the benefits obtained by the participating companies are greater by reason of the great consumer appeal in the products being couponed.

Cross-couponing, coupling as it does price cutting with a tie-in sale, seems to represent a competitive potential which, if realized, would seriously cripple a large segment of small business. Price cutting is a fearsome weapon, and its unrestricted use is generally conceded to lead, in practice as well as in theory, to monopoly. A tie-in sale is a device purposed to restrain competition, and, in the words of the Supreme Court, can "serve scarcely any other purpose." In the case of cross-couponing, the customer may be said to be free to resist the blandishments of the coupon offer, but to do so he must proceed against his own best interest and throw away whatever value is represented by the coupon. Evidence that not many customers are made of such stern stuff is found in the phenomenal success of the cross-couponing practice.

By emphasizing the threat of cross-couponing, the committee does not wish to indicate that it condones regular couponing. Although a lesser evil, couponing is a serious threat itself to the extent that it permits price cutting on a selective basis. Distribution of coupons is made in accordance with the manufacturer's estimate of where he needs help in selling his products, since placing coupons in every home in the country is not feasible. Under such circumstances, he might be tempted to concentrate in areas where his small competitors are strong. Or he may place particular emphasis in couponing products with which products of small companies are in competition.

Grocers, too, complained to the committee about the cross-couponing practice, but for different reasons. They found the bad effects of cross-couponing upon their operations to vary from those of couponing only in degree. With cross-couponing, there were stocks of two products which did not move, instead of one, and the grocers' loyalty to products made by small companies was sorely tried. But their chief complaint was that they were not adequately compensated for the time and effort necessarily expended in handling coupons. The grocers also stated that they were being used involuntarily as redemption agencies and that it was difficult to get back from the issuing companies money which they had used to redeem coupons.

Gravely concerned by the threat to small business implicit in cross-couponing activities, your committee, on September 22, 1953, wrote to the Federal Trade Commission, requesting the preparation of a re-

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port describing the manner in which the Commission was proceeding against the practice. On October 23, 1953, Mr. Edward Howrey, FTC Chairman, informed the committee that the Commission had undertaken an—

> investigation for the purpose of obtaining complete, accurate, and current information with respect to couponing practices, and particularly that practice by which one company coupons the product of another—

and that such information would be examined for—

> possible violation of section 5 of the Federal Trade Commission Act.

On May 13, 1954, the committee again wrote to the Commission, asking to be advised of the results of the preliminary investigation. The Federal Trade Commission replied on June 3, 1954, that the Commission had—

> experienced some difficulty in obtaining voluntarily all of the information necessary for a complete investigation of some of the companies involved.

Accordingly, the Commission's resort to compulsory process had become necessary. Once again, in December, the committee requested a report on the results of the FTC investigation of cross-couponing and similar practices and was advised that the "investigation was continuing."

While the slow pace of the FTC in this case may have been warranted administratively, it nevertheless strengthens the impression that the Commission cannot move fast enough to resolve the pressing problems which frequently confront small business. Delayed justice often results in no justice at all for the small-business man.

On the basis of information presently before your committee, it would appear that use of the cross-couponing practice is losing some of its attractiveness. That this apparent result may have been brought about by the development of a sense of social responsibility on the part of certain cross-couponing companies, is a possibility pleasant to contemplate. Should this be the case, your committee might feel that its frequently voiced public disapproval of cross-couponing had accomplished its desired effect. However, another factor must be largely credited for the loss in appeal of the practice. The Safeway Corp., a grocery chain—national in scope—with some 2,000 outlets, recently announced its new policy for redeeming coupons of all types. Henceforth Safeway clerks will redeem a customer's coupons merely upon presentation. No effort is to be made to see that the customer has bought the products specified in the coupon terms. The coupons can be used to buy the couponing company's products or those of the small-business competitor. Since retail competitors will undoubtedly follow the lead which Safeway has boldly set in this matter, the cross-couponing practice has lost most of its effectiveness. No company will want to provide scrip with which customers can buy products of a competitor.

Safeway's new coupon policy will have its effects upon couponing as well. Moreover, the Post Office Department's soon-to-be-instituted policy of requiring addresses on all third-class mailing matter will increase the cost of the practice, thus inhibiting its use. Finally, your committee is hopeful that the Federal Trade Commission will soon complete its investigation of couponing practices and take action on the complaints before it.

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CHAPTER VI

GOVERNMENT COMPETITION WITH BUSINESS

One of the major problems confronting your committee during the past year was that of Government competition with private business. This is not a new problem. During recent years, it has become apparent that the tentacles of Government competition were embracing many areas of business activity.

In order to define adequately your committee's interest in this subject, it must be pointed out that there are two general types of such competition. First there is the activity designed to service the public. This competition is usually started as a result of a general policy decision by the Government. The second type is that designed to be utilized by the Government itself with no direct service intended for the general public. This competition usually stems from an administrative decision within a department of the Government.

Your committee's attention has been directed to the latter. Complaints relating to a similar story have come from numerous sources. Government competition is curtailing and in some cases entirely eliminating the private business firm from an area of business activity.

To further extend the definition of your committee's interest, it must be said that most of the complaints involve the three military services.

Investigation reveals that the military departments compete with private firms in over 100 areas of business activity. The effects of this competition constitutes a serious threat to the Nation's economic future. The loss or curtailment of any business firm as a result of this activity is a matter of deep concern. In addition, the Government suffers a loss of revenue through reduced taxes when the Government takes business away from private firms. Extended Government competition can also threaten the Nation's mobilization base.

Your committee has tried to analyze the reasons to justify Government competition with private enterprise. Some of the reasons presented to your committee by the Department of Defense include the following:

(*a*) The necessity for meeting the military demand at all times without delay;

(*b*) The necessity for training military personnel for advance-base or overseas operations where private sources will not be available for the particular work or service;

(*c*) The necessity for control in order to avoid security violations;

(*d*) The necessity for maintaining a mobilization base;

(*e*) The necessity for continued research and development;

(*f*) The desire to realize savings for the Government; and

(*g*) The lack of commercial producers for a desired item.

Any of these reasons or others not listed might be valid in any given instance. However, the committee feels that in the majority of cases close scrutiny will show that competition is allowed to exist or to grow with no real appraisal of the activity on the basis of those justifications which often are found to be no more than rationalizations.

It is alarming to consider that the military departments are operating in such commercial-type lines of endeavor as railroading, coffee roasting, logging and sawmill operations, trucking, warehousing, hotel and laundry operations, scrap processing, tire retreading, baking, dry cleaning, salvage, and the manufacture of ice cream, maps, flags, paint, clothing, and numerous others.

No one has denied that this competition exists and that it constitutes a serious problem. The difficulty comes when an attempt is made to remove the Government from one of its operations. The committee is pleased to report that the year 1954 saw concerted action devoted to the removal of Government from areas of competition where private concerns were ready and able to provide the same results as cheaply, and often at a reduced cost.

A review of this activity not only will show what is being done but will also serve to point up the serious nature of the problem itself. Attempts to remove the Government from competition were prevalent in both the executive and legislative branches of Government and within the ranks of industry itself during 1954.

ACTS OF CONGRESS

Congressional action in the 83d Congress approached the problem from three different directions. Section 715 of Public Law 458, dealing with Defense Department appropriations, contained language designed to make clear the intent of Congress that such competitive activity be reduced to a minimum. That section reads as follows:

> SEC. 715. Not more than $40 million of the amounts received during the current fiscal year by the Department of Defense as proceeds from the sale of scrap or salvage materials, shall be available during the current fiscal year for expenses of transportation, demilitarization, and other preparation for sale or salvage of military supplies, equipment, and materiel: *Provided*, That a report of receipts and disbursements under this limitation shall be made quarterly to the Committees on Appropriations of the Congress: *Provided further*, That no funds available to agencies of the Department of Defense shall be used for the operation, acquisition, or construction of new facilities or equipment for new facilities in the continental limits of the United States for metal scrap baling or shearing or for melting or sweating aluminum scrap unless the Secretary of Defense or an Assistant Secretary of Defense designated by him determines, with respect to each facility involved, that the operation of such facility is in the national interest.

Although this section deals with only one facet of the problem, the Congress further recognized the threat to free enterprise in other fields of business when the following language was written into the Senate Appropriations Committee report:

> Proprietors of small business in other fields have also lodged complaints with the committee, citing examples of competition by the military service. The committee suggests that the Secretary of Defense order a survey to determine the extent of such competition and after reviewing the findings, report to the committee with appropriate recommendations.

Such provisions in the law and language in the committee report reflect the seriousness with which the problem is being approached.

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Another legislative approach was revealed in the 83d Congress with the introduction of legislation aimed at curbing Government competition. These bills would establish an Anti-Government-Competition Board, whose approval would be required before any Government agency could engage in industrial- or commercial-type activities normally carried on by private enterprise. The introduction of such legislation is further proof of the concern over Government competition and reflects the widespread complaints which have been lodged by members of industry.

A third approach by the Congress can be found in the continuing investigation, study, and hearings conducted by your committee, the Government Operations Committee of the House, and other committees whose attentions have been drawn to the problem.

Through the three techniques mentioned, it should be apparent to the Government agencies involved that if definite action is not forthcoming to remove the Government from competition, the Congress will meet the problem with appropriate legislative action and force the curtailment of competition. Your committee is planning to hold further public hearings during the coming year in an effort to determine whether competition in certain areas should not be eliminated.

HOOVER COMMISSION

Your committee is aware of the work currently being done in this area by the Commission on Organization of the Executive Branch of the Government. The study of the Hoover Commission embraces both general types of Government competition. Its findings will carry great weight with the Congress, and any recommendations for the removal of Government from competition with private business will further point up the need for immediate corrective action by the agencies involved.

DEPARTMENT OF DEFENSE

Your committee has followed closely the actions taken during the past year by the Department of Defense in this field. The first large-scale move came on March 8, 1954, with the release of Department of Defense instruction 4100.16. This entire document may be found in the appendix of this report. Your committee studied this instruction with mixed reactions. The issuance of the directive showed that there was a general awareness of the problem and seemed to indicate a desire on the part of the military departments to take action before it became necessary for Congress or the President to step in.

A close reading of the document, however, makes it apparent that a continuation of present facilities and the addition of facilities which would be in Government competition with business can be easily justified within the framework of the policy spelled out.

In the initial purpose clause, the following language is found:

> This instruction implements references (*a*) and (*b*) and prescribes the basic program and guidance for the continuance in operation or the establishment of commercial and industrial-type facilities by the military departments, agencies, and offices of the Department of Defense. * * *

Such direction in the purpose clause of the directive could easily be interpreted as being a policy of justification for existing facilities and could be used in support of new facilities.

More confidence in the intentions of the Department of Defense could have been gained by a clear-cut statement that the purpose of the instruction was to set forth a basic program and guidance for the elimination of competitive enterprises.

A second weakness appears in the authorization to exempt those commercial or industrial facilities technically within the definition set out in the directive but regarded as borderline inclusions. The obvious difficulty in this statement of the policy is the determination of the borderline inclusions. This could result in an effective loophole in any policy to remove the Government from competition with private firms.

Throughout the instruction, it will be found that in calling for a review of existing facilities, the emphasis is placed on establishing those reasons for the continuation of competing enterprises rather than emphasizing strongly the need for reducing the areas of competition.

The committee feels that the sections on cross servicing within the Defense Department are set forth in a manner that will discourage duplication of competitive activities. This, however, would not tend to remove the Government from competition with outside firms, but would reduce the number of personnel and the facilities already in use by the Government.

Your committee also notes that in setting up criteria to be utilized in arriving at a cost analysis of the Government operations, the item of local, State, and Federal taxes paid by private firms is not included. This item has always been a troublesome one when an attempt has been made to compare the cost of operation of Government-owned facilities with private plants. Your committee feels that if any accurate comparison is to be made, these items must be allowed for by the Government in calculating overall costs.

The directive called for analyses and determination of the following facilities within 150 days of the date of the directive:

(*a*) Aluminum smelting or sweating facilities;
(*b*) Scrap metal baling;
(*c*) Clothing factory and cloth sponging plant;
(*d*) Coffee roasting plant;
(*e*) Motion-picture studios;
(*f*) Paint factory;
(*g*) Rope walk;
(*h*) Sawmills.

As of January 1, 1955, the committee was not aware that any of these reports had been completed. The time for filing the reports had been extended beyond the 150-day limitation. Your committee feels that such reports should be made as quickly as possible and hopes that periodic extensions of time will not become the rule.

The committee is pleased to report that results in certain areas have become apparent. Your committee feels that in view of the widespread interest in the problem, the following report from the Deputy Assistant Secretary of Defense (Supply and Logistics) should be printed in its entirety.

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REPORT OF PROGRESS RELATIVE TO THE DEPARTMENT OF DEFENSE COMMERCIAL AND INDUSTRIAL PROGRAM (PERIOD JULY 1, 1954, THROUGH SEPTEMBER 30, 1954)

COMMERCIAL AND INDUSTRIAL-TYPE FACILITIES

DEPARTMENT OF THE ARMY

1. Review of commercial and industrial-type facilities

Reviews of the first and second increments of commercial and industrial-type facilities directed by DOD instructions 4100.16 are proceeding in accordance with revised schedules.

2. Discontinuance of facilities

(*a*) *Storage.*—An Army plan for consolidating and eliminating storage facilities was approved by DOD on August 2, 1954. The plan provides for closing 10 depots and inactivating the supply missions at 7 additional installations. Implementation will result in the release of 19 million gross square feet of covered and 20 million square feet of open storage space, 6,000 civilian employees, and reduce operating costs by $30 million a year.

Pursuant to this plan, the Assistant Secretary of Defense (Properties and Installations) has approved assignment of the following facilities to the Department of the Air Force:

Terre Haute Ordnance Depot
Ogden Ordnance Depot
San Antonio General Depot
Baton Rouge Engineer Depot
Mira Loma Quartermaster Depot
Stockton Annex of Sharpe General Depot
Marietta Transportation Depot (½)

(*b*) *Maintenance.*—Continuing reduction in repair backlogs have allowed the consolidation of various maintenance activities. As a result, action has been initiated to close one depot maintenance facility with a resultant annual savings of over $733,000—without reducing the efficiency of the overall technical service mission.

(*c*) *Scrap-metal baling.*—Atlanta General Depot, Atlanta, Ga., has decided to discontinue its scrap-metal baling operations.

(*d*) *Transportation and traffic management.*—

(1) The Department of the Army has published directives establishing policy for the greater utilization of commercial transportation in local movements of personnel.

(*a*) Buses will be chartered in lieu of Army-operated buses where economically feasible.

(*b*) Use of local public transportation facilities (buses, trolleys, subways, and taxis) for local transportation of personnel is authorized and encouraged.

(2) On August 16, 1954, the defense bus routes, operated by the commanding general, Military District of Washington, were placed under contract with the Gray Lines for operation of the bus routes serving the Pentagon, Navy Annex, Fort McNair, tempos A, B, C, and other defense establishments.

DEPARTMENT OF THE NAVY

1. Discontinuance of facilities

(*a*) During the quarter beginning July 1, 1954, the Navy Department continued the commercial and industrial-type facility review program initiated earlier this year. The program was launched to insure that unwarranted facilities would not be continued in competition with private enterprise, and to develop and utilize effective cross-servicing principles. Surveys currently are being conducted in certain commercial and industrial-type facility operations listed in a first increment schedule published in the previous quarter. A second increment schedule was promulgated by SECNAV instruction 4860.8 of July 9, 1954, which implemented DOD instruction 4100.17 of June 28, 1954.

(*b*) During the period July 1–September 30, 1954, the following facilities were discontinued:

Laundries:
Rug cleaning and dyeing plant, Naval Air Station, Alameda, Calif.
Laundry, Naval Ordnance Plant, Pocatello, Idaho
Box and crate shops:
Box shop, Marine Corps Clothing Depot, Philadelphia, Pa.
Box shop, Naval Air Station, Norfolk, Va.
Scrap-metal baling facility:
Scrap-metal baler, Marine Corps Recruit Depot, Parris Island, S. C.
Scrap-metal baler, Marine Corps Air Station, Cherry Point, N. C.
Cement mixing facility:
Cement Mixing Plant, Naval Training Center, Great Lakes, Ill.
Railroad facility:
Railroad Facility, Naval Air Station, Patuxent River, Md.
Tree and garden nursery:
Nursery, Naval Ordnance Laboratory, White Oak, Md.
Automotive repair shops:
Garage, DPWO 12th Naval District, San Bruno, Calif.
Garage, Naval Receiving Station, Anacostia, D. C.
Garage, Naval Supply Depot, Newport, R. I.

2. Sales to private enterprise

During this period the Naval Hospital, Chelsea, Mass., sold a communication cable plant to New England Telephone & Telegraph Co. The Naval Personnel Center, Omaha, Nebr., sold a communication plant to the Northwestern Bell System.

3. Emphasis on private enterprise

(*a*) Increased emphasis has been given projects which foster private enterprise. Directions have been published for use of blanket purchase orders which provide basically a charge account method of buying that reduces the number of billings by the local supplier and lowers the administrative costs of procurement. In addition, imprest funds procedures have been utilized to speed payment to suppliers.

(*b*) In the fiscal years 1954 and 1955, respectively, placement of commercial and industrial-type work orders with private industry was increased from $17,649,000 to $28,482,000 in the program for overhaul and progressive maintenance of aircraft and related aeronautical material.

(*c*) Definite efforts have been made to increase the degree of reliance placed upon private contractors for products and services. The Naval Ammunition Depot, Crane, Ind., was instructed to procure a number of doors by contract rather than to utilize station shop facilities in their manufacture. Railroad track and locomotive repairs have been obtained under contract at many stations. After consideration of relative costs a contract was let for rehabilitation of prefabricated buildings held in stock at Camp Lejeune, N. C. The Naval Ordnance Test Station, Pasadena Annex, Calif., has arranged for vehicle repairs by commercial contract. In addition, increased emphasis has been given to the Navy Department small business advisory service.

4. Reduction of bus service

It is now estimated that a reduction in excess of 500,000 miles annually has resulted from the discontinuance of bus operations at 16 naval activities. Calculations are based upon a review of bus operations discontinued during the period January 1, 1953 to October 1, 1954.

5. Shipbuilding program

The shipbuilding program administered by the Bureau of Ships has consistently recognized the necessity of supporting the private shipbuilding industry. All ships and craft in the fiscal year 1954 construction program are being constructed by private shipbuilders. This program includes 18 ships and 150 craft. For the current fiscal year 1955, 24 of a total of 28 ships are designated for construction by private shipbuilders and 1,004 of a total of 1,006 craft are to be awarded to private shipbuilders. Overhaul work to be accomplished by private shipbuilders has steadily increased in dollar value, as illustrated by the fact that funds authorized for repair and overhaul and allocated to private shipbuilding have increased from approximately $34 million in fiscal year 1953 to $61 million in fiscal year 1954, to an estimated $82 million in fiscal year 1955 funds.

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6. Cross and intra-Navy servicing

As an example of Navy-Marine Corps cross-servicing, Naval Ammunition Depot, Fall Brook, has arranged for vehicle repairs to be made at the Marine Corps Base, Camp Pendleton, Calif. Examples of intra-Navy servicing agreements include vehicle repairs required at Naval Net Depot, Melville, R. I., are to be performed at the Newport Naval Base, and the Naval Ordnance Laboratory, Corona, Calif., has furnished personnel to the Naval Hospital, Corona, to maintain station automotive equipment by using shop facilities at that location.

DEPARTMENT OF THE AIR FORCE

1. Pipeline fuel delivery

At Smoky Hill, Air Force Base, Kans., a right of easement was recently granted the Kaneb Pipe Line Co., permitting the firm (at its own expense) to tie in its main line with the Smoky Hill storage tanks. JP–4 fuel is now moving 350 miles by pipeline to this base, and it appears that this will save the USAF from $100,000 to $200,000 annually.

The Smoky Hill pipeline project is the result of a coordinated effort by transportation, supply, and quality control personnel. It is the first time that a commercial multiproducts pipeline has been used for direct delivery of fuel to an Air Force base.

The results of the Smoky Hill operation are being closely watched to determine the feasibility of greater use of pipeline and, for future planning purposes, 32 pipeline companies have been asked to furnish detailed information on their systems.

2. Contract maintenance policy

A revision of AFR 60–17 "Contract maintenance" has been approved for publication. This revised regulation prescribes the Air Force's current broad policy regarding contracting for maintenance with commercial organizations. It establishes the criteria to be used by Air Force activities in the use of contract maintenance.

3. Contract maintenance of Air Force equipment

Technical Order 00–25–68, "Contract maintenance of Air Force equipment," published July 1, 1954, implements AFR 66–17 by establishing the detailed policy and general procedures for the contractual accomplishment of organizational, field, and depot level maintenance. The policy of the Air Force is to utilize a combination of commercial and Government resources in accomplishing maintenance. Depot level maintenance of Air Force equipment in specific property classes listed in the technical order is normally performed by contract or cross-servicing agreement. Field and depot level maintenance of commercial-type equipment is contracted to the maximum extent without jeopardizing the support of combat organizations or the flexibility of the depot system. Dollarwise, the Air Force has over 50 percent of its depot maintenance funds programed for contractual maintenance in fiscal year 1955.

4. Contract refueling

The service test of contract refueling is continuing. Bids received to continue the service test at two bases for another year indicate a favorable cost trend. Reduction in costs over the previous contract amounted to as much as 37 percent. This offers the possibility of expanding the service to other Air Force bases where a self-contained military capability is not required.

5. Telephone systems

The Air Materiel Command has been directed to negotiate with commercial communication companies for the sale of 15 Government-owned or partially owned telephone systems which could not be justified for retention under DOD Directive 4640.2, dated October 9, 1952. The Secretary of Defense has approved continued Government ownership of systems at 20 ZI Air Force bases. Government-owned systems at 23 other bases will remain in their present status pending further study.

6. Army storage facilities

The Army is inactivating facilities having a total of 19 million square feet of storage space. The Air Force has surveyed the facilities at Baton Rouge, La.; Terre Haute Ordnance Depot, Ind.; Mira Lima Quartermaster Depot, Calif.;

Ogden Arsenal, Utah; San Antonio General Depot, Tex.; and Stockton Annex of Sharpe General Depot, Calif. A request has been submitted to Congress for transfer of these facilities to the Air Force. AMC field teams are working on effective dates of transfer.

7. Laundry and dry-cleaning plant, Paris, France

Action was taken to reprogram the size of the proposed laundry and dry-cleaning plant to be constructed at Paris, France, to provide service to Army activities in the area.

8. Survey of commercial- and industrial-type facilities

Implementing action on DOD Directives 4100.15 and 4100.16 continued during the reporting period. An additional list was compiled of facilities owned or operated by the Air Force, in accordance with DOD Directive 4100.17. This list included acetylene manufacturing, automotive repair shops, cement-mixing plants, cobbler shops, office equipment repair shops, oxygen and nitrogen manufacturing, powerplants, and tree and garden nurseries.

Only continued action which brings about actual elimination of Government competition will prove that the Department of Defense is willing to forego many of its business activities. Your committee hopes that the Department of Defense will not attempt to rationalize each activity by throwing up the time-worn smoke screens of national security, so-called dollar savings, the need for training personnel, and others. The time has come when we need a straightforward, aggressive attack upon a steadily growing cancer in our economy.

Another attack upon Government competition has come from spokesmen for the present administration. In an address on December 7, 1954, Mr. Rowland R. Hughes, Director of the Bureau of the Budget, discussed the problem of Government competition at length and denounced the growing tendency of Government to encroach upon the activities of private firms. Mr. Hughes stated:

> We are determined, wherever appropriate, to use the same amount of ingenuity in the future in getting the Government out of business as has been used in the past in getting the Government into business.

Mr. Hughes pointed out that the Department of Commerce, Department of Defense, Bureau of the Budget, the Hoover Commission, and congressional committees are currently working toward the goal of reducing competition.

On January 25, 1955, Mr. Hughes ordered every Government department and agency to examine its business activities to see which could be "reasonably ended." This order called for a report on commercial activities by April 15, 1955, and an evaluation of manufacturing enterprises by July 15, 1955.

Your committee feels that the elimination of unnecessary and nonessential competitive activities by the Government should be given a high priority by all agencies. Concrete results will only come about when all concerned recognize that such competition constitutes a serious threat to an effective free-enterprise economy.

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CHAPTER VII

MOBILIZATION PLANNING FOR FUTURE EMERGENCIES

SECTION A. INTRODUCTION

Throughout this report and in all its work, your committee has based its program on the firm belief that independent business firms are an integral part of the American economy and deserve fair and equitable treatment as citizens in a free-enterprise economy. In this chapter, however, the stress will be put upon the essential role these smaller concerns have played in past emergencies and the burden they will inevitably be expected to assume whenever our Nation faces a struggle for survival.

The small businesses of the United States have been called upon to make important contributions to our military forces from the earliest days of the Republic. Each time our productive capacity has been mustered into military service, its output has tipped the balance scales of war in our favor.

On the other hand, it has appeared to be a hallmark of our competitive economic democracy that many months were necessary before the full weight of our shops and our factories was felt. Much muddling, many dislocations, and sometimes almost complete chaos developed before an integrated productive mobilization was achieved.

In 1955, it would be reckless and irresponsible to assume that the United States will again be given an opportunity to make mistakes or waste time in mobilizing. Plans must be made before M–Day and all the pieces must be in place long before the first shot is fired.

Your committee feels that one thing is unchanged, however: Small-business firms will again be necessary to our defense effort; no war can be won without them. Therefore, your committee will continue to study the history of the past two mobilization efforts to determine what they have to teach us and it will survey the various executive agencies to determine how well those lessons have been learned.

In the following pages, an effort will be made to bring before the Senate your committee's findings and recommendations in several fields in which serious dislocations were experienced following the outbreak of war in Korea.

SECTION B. MACHINE TOOLS

1. Introduction

In 1952, the Senate Small Business Committee conducted an extensive investigation of the machine-tool industry, and in its report on that study your committee concluded:

> **The dependence of small manufacturing concerns on a healthy and productive machine-tool industry is readily apparent. The welfare of the machine-tool builders and small manufacturing concerns go hand in hand. Prompt action to alleviate the chronic problems of the machine-tool industry is necessary if**

small manufacturing concerns are to avert the effects of machine-tool shortages in the future.[1]

Nothing has happened in the last 2½ years to change that conclusion. As a matter of fact the months following June 1952 have only substantiated and strengthened the belief that machine tools are the base of our industrial society, and the status of the machine-tool builders is an accurate barometer forecasting changes in other segments of the economy.

Furthermore, when the United States faces an unsettled and unpredictable international outlook it must be certain at all times that its machine-tool industry is healthy, vigorous, and prepared to go into the high gear of operations around the clock. For not one plane can be made, not one ship launched, not one missile produced without hundreds and thousands of intricate machine tools. As the weapons of war increase in complexity, so must the tools which produce them. As the immediate striking power of any potential enemy increases, so must the Nation be that much closer to mobilization readiness.

The machine-tool industry is the primary mobilization problem. It is essentially a collection of small firms with a few medium-sized companies as the largest. None of its components can stand the financial strain of a long depression period and none of them can develop new machines and new techniques or conduct research in other related fields unless it is profitably engaged in the production of today's tools. Machine-tool builders are highly skilled and are not easily or quickly replaced if they are forced into other industries during the slow portion of their industry's recurrent feast-or-famine cycle.

Thus the stakes are high and the problems difficult in this field. It is for these reasons that your committee feels that a full review of the entire subject is appropriate in this report and why the committee will devote more attention to the industry during 1955.

2. Small Business Committee hearings and report, 1952

Machine tools soon became the No. 1 bottleneck after the outbreak of war in Korea. While producers of military goods had the 2 years from 1939 until Pearl Harbor to get into production, no such grace period was given in 1950. In 1940 and 1941 our machine-tool builders had begun to produce items on order from Western European nations and were gradually rounding into trim by the time the United States was plunged into World War II. On the other hand, several circumstances combined to leave the industry in extremely poor condition to meet the challenge of the military buildup in mid-1950.

First, and perhaps foremost, was the shortsighted policy adopted at the end of World War II of disposing of all Government-owned production equipment as fast as possible, no matter what the results on the builders or on the market price. Thus, for 10 or 20 cents on the dollar, the Government flooded the market with machine tools, and in large measure displaced the builders. Secondly, the industrial dip and military budget cutbacks in 1949 and 1950 put a damper on the prospects of orders for new machines from regular customers.

Within a matter of weeks after the invasion of South Korea your committee was receiving complaints from manufacturers who needed

[1] Machine-Tool Shortages, S. Rept. 1988, 82d Cong., 2d sess., 1952, p. 44.

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machine tools in order to receive defense contracts and soon thereafter machine-tool builders themselves complained of their inability to get into full production because of acts of omission or commission on the part of defense mobilization officials in Washington. For almost a year your committee assisted both parties as much as possible, but refrained from a formal investigation.

By early 1952, however, it was decided to hold hearings and issue a report on the machine-tool situation. Twelve days of hearings were held in March and April and a report entitled "Machine-Tool Shortages" was submitted to the Senate by your committee on June 30, 1952. The committee found that—

> the machine-tool builders had been faced with serious problems in manpower, materials, and price ceilings, and had met with considerable difficulty and delay after Korea in getting the responsible officials in Washington to recognize those problems and to give the industry the aid it needed in order to do its job.[2]

In its recommendations, the Small Business Committee spoke firmly against sales of Government-owned tools which so disrupted the industry after World War II and deepened the valley of the "famine" portion of the cycle. Your committee said:

> As a first step in that direction the committee feels it imperative that responsible Government officials resolve now not to allow the broadcasting of surplus machine tools at sacrifice prices upon the conclusion of the current emergency. The committee recommends that surplus machine tools be stockpiled so that the country will never again be caught short in a period of acute national need. Such a step will guarantee the industry the normal market it must have if it is to thrive in peacetime.[3]

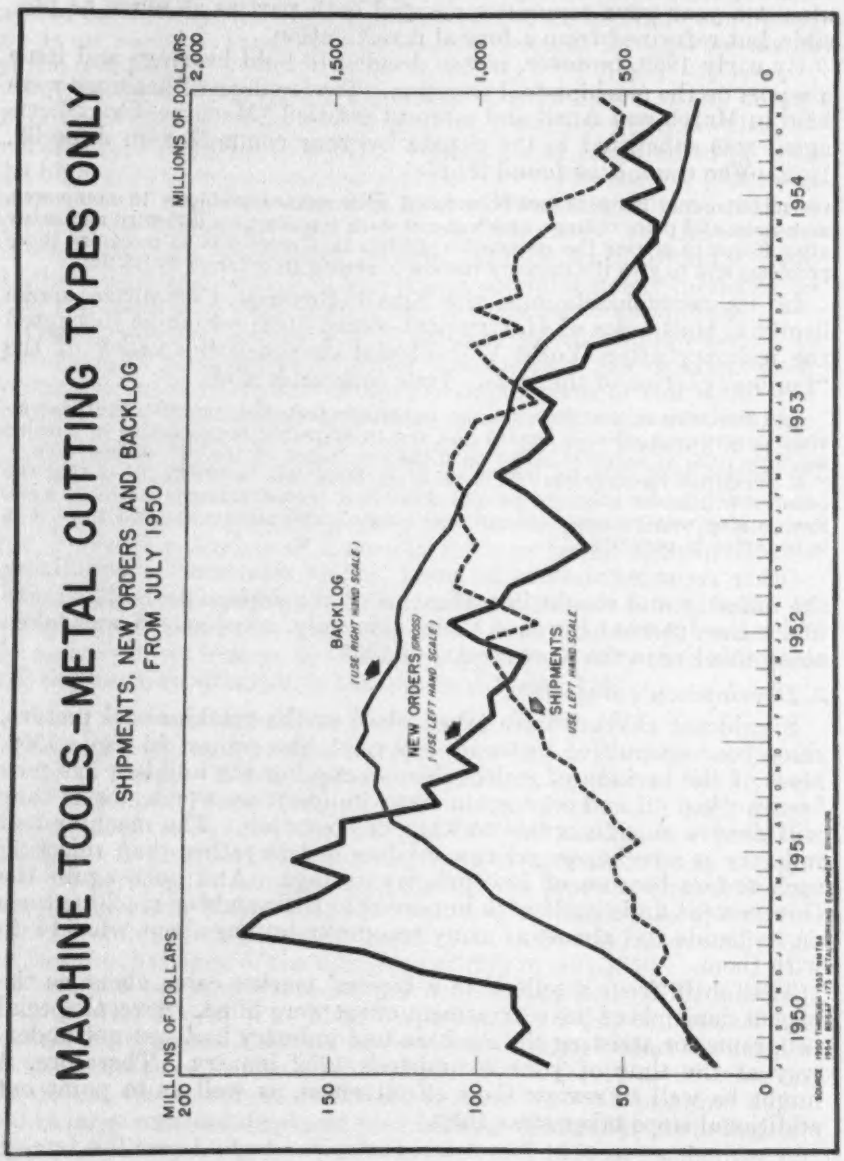
Other recommendations included similar measures for stabilizing the industry and sought liberalization of the depreciation allowances under the Internal Revenue Code. Happily, some action was taken along this line in the Revenue Act of 1954.

3. Developments since 1952

Significant changes have taken place in the machine-tool picture, since your committee wrote its report on the subject in June 1952. Most of the backlog of orders then strangling the builders has now been worked off and once again many builders are wondering if they will receive enough orders to keep in operation. The machine-tool industry is striving to get new civilian orders rather than rejecting such orders because of low priority ratings. And once again the Government finds itself with hundreds of thousands of machine tools on its hands and almost as many recommendations about what to do with them.

This shift from a sellers' to a buyers' market came about as the urgent demands of the rearmament effort were filled. Several special programs for assisting the machine-tool industry had just got underway at the time of your committee's 1952 inquiry. Therefore, it might be well to review their effectiveness, as well as to point out additional steps taken since then.

[2] Ibid., p. 3.
[3] Ibid., p. 43.



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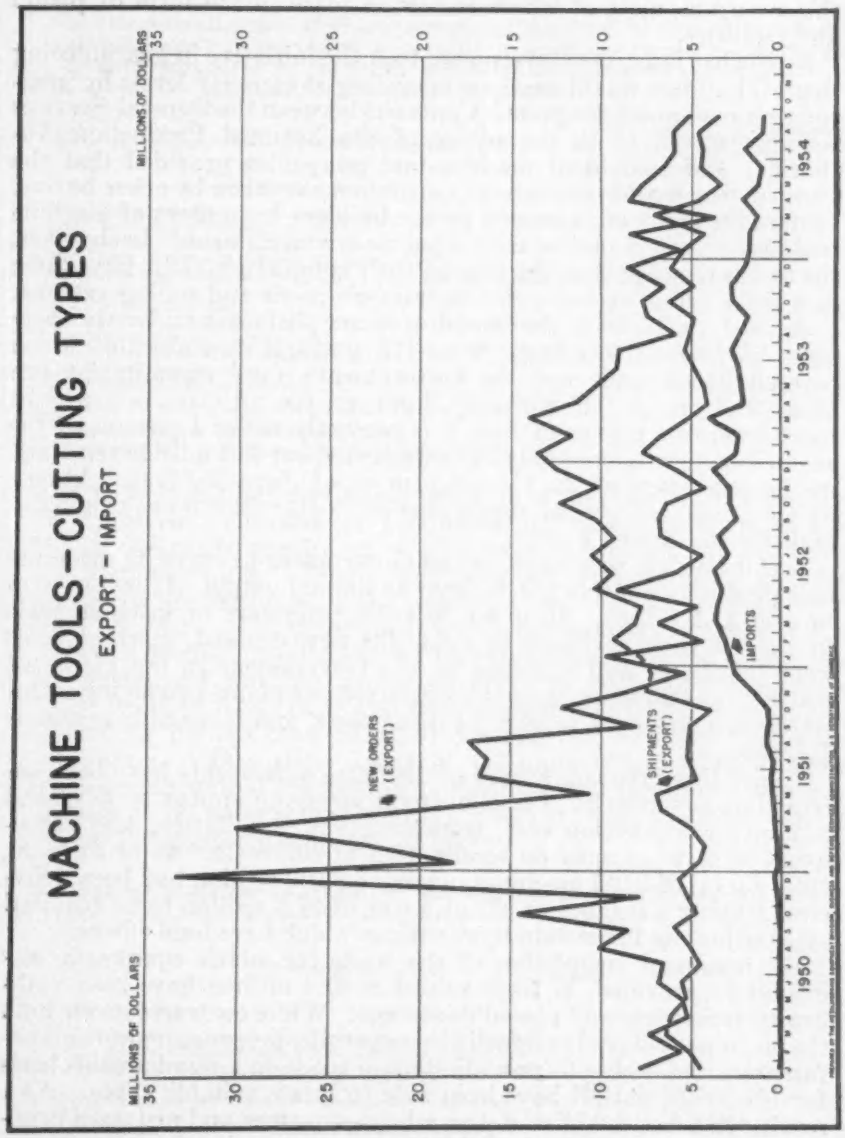
MACHINE TOOLS—CUTTING TYPES
EXPORT – IMPORT
MILLIONS OF DOLLARS
35
30
25
20
15
10
5
0
NEW ORDERS (EXPORT)
SHIPMENTS (EXPORT)
IMPORTS
1950
1951
1952
1953
1954

An early action was to recognize the shortage of facilities in the industry and make it eligible for certificates of necessity entitling individual toolbuilders to qualify for accelerated tax amortization. Approximately $300 million of tax certificates were authorized under this program, most of which is now in place in the form of plants and facilities.

Somewhat later, the Government took the initiative in guaranteeing that all builders would continue operating at capacity levels by instituting a pool-order program. Contracts between the General Services Administration (with the advice of the National Production Authority) and individual machine-tool companies provided that the Government would purchase any machines not taken by other buyers. Orders for new tools received by the builders from users of machine tools were applied against GSA's purchase commitment. In the event the tools are not sold at the time of their completion, GSA buys them at a price which excludes the contractor's profit and selling expense.

As of June 30, 1954, the record of accomplishment under this program has been outstanding. Some 115 contracts were executed which covered 94,225 tools and the Government's total commitment ran about $1.4 billion. Fortunately, however, the ultimate cost will be much less; as a matter of fact, it is presently under 1 percent of the acquisition figure, since only 711 valued at about $9.4 million remained in the possession of the Government as of June 30, 1954. Almost half of these are special single-purpose tools which were originally built for the Armed Forces.

A third action was taken by the Government to expedite machine-tool production and to lift it from an annual output of $300 million to over $1.2 billion. In order to assist producers of machine tools to expand their facilities to meet this new demand, machine tools were purchased and installed by the Government in the plants of machine-tool builders, their subcontractors, or plants producing essential accessories, such as gages, cutting tools, and other aids to manufacture.

Under this program a total of 120 lease agreements have been entered into covering 3,219 machine tools involving approximately $38.8 million in acquisition cost, transportation, installation, and subsequent removal expense on termination of contracts. As of June 30, 1954, a total of 2,257 machines involving $31.2 million had been delivered, leaving a balance of 939 at a cost of $7.5 million to be acquired after adjusting for certain terminations which have been effected.

By reason of completion of the work for which equipment was originally provided, 77 tools valued at $1.4 million have been withdrawn from lease and placed in storage. While contracts under both the machine-tool pool and facilities-expansion programs require manufacturers and lessees to provide storage space on a reimbursable basis for idle tools, not all have been able to locate suitable space. As a result, GSA has established 2 warehouses to store and maintain properly those tools delivered to the Government under the 2 programs. It is planned that these tools will be retained as a permanent reserve for future emergencies. The remaining tools are in contractors' plants and continue to yield the Government a monthly rental. It has been estimated by the GSA that the total rental income earned on this equipment by the close of fiscal year 1955 will amount to approxi-

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mately $8.6 million on a program for which the probable ultimate net cost to the Government is expected to amount to $27.1 million. The kinds of tools provided by this program are indicated in the following table:

New Government-owned tools and equipment acquired for leasing to industrial establishments to expand their capacity to produce—Percentage distribution of units purchased by the broad metalworking equipment categories

SCC No.	Equipment categories	Percent of total tools and equipment [1]	Percent of total machine tools [1]
3411	Boring machines	4.5	11.3
3412	Broaching machines	.2	.5
3413	Drilling machines	4.6	11.5
3414	Gear cutting and finishing machines	1.6	4.0
3415	Grinding machines	11.6	29.0
3416	Lathes	6.8	17.0
3417	Milling machines	7.1	17.7
3418	Planers	1.4	3.5
3419	Miscellaneous machine tools	2.2	5.5
	Other miscellaneous equipment	[2] 60.0	([2])
	Total machine tools		100.0
	Total tools and equipment	100.0	

[1] Estimate based on GSA review of contracts.
[2] Represents only approximately 10 percent of dollar value.

A more recent and continuing program in the attack on the machine-tool problem concerned the production of the extremely large tools which ordinarily require up to 30 months to produce and are known as "elephant tools." Under this program, arrangements are made to assure the existence of the expanded capacity for a period of at least 10 years. The program involves accelerated tax amortization, loan guaranties, installations of Government equipment under lease contracts, and working-capital advances to manufacturers. As of June 30, 1954, 3 contracts had been entered into under this program providing for the installation of 308 units of equipment valued at $5 million. Under these contracts, 187 units valued at $3,802,475.35 have been acquired for leasing to elephant-tool producers, leaving a balance of 121 units valued at $1,197,524.65 yet to be acquired. Details of this program are summarized below:

Summary statement—Elephant machine-tool program,[1] June 30, 1954

Item No.	Item description	Number of units	Dollar value	Percent of maximum Government liability
I	Total orders placed (for Government acquisition of elephant tools for leasing to industrial establishments under 3 leasing contracts [2] negotiated by GSA) (this represents maximum Government liability)	308	$5,000,000.00	100.0
II	Tools acquired by the Government under this program	187	3,802,475.35	76.0
III	Tools yet to be acquired	121	1,197,524.65	24.0
IV	Tools acquired which have been placed in storage	None	None	None
V	Tools acquired remaining with lessees	187	3,802,475.35	76.0

[1] An elephant tool is defined as an unusually large multipurpose precision machine tool.
[2] These 3 contracts are with the G. A. Gray Co. for 12 units valued at $650,000; Onsrud Machine Works, Inc., for 94 units valued at $1,600,000; Giddings & Lewis Machine Tool Co. for 212 units valued at $2,750,000.

One obvious shortcoming in current programs for and discussions about the machine-tool industry has long concerned your committee. No one now knows how many machine tools the Government owns, where they are, or in what condition they are. As far back as June of 1952, your committee was assured by officials of the Office of Defense Mobilization, the Department of Defense, and the National Production Authority that a firm machine-tool program would be established. Much progress has been made and many directives and orders have been issued to meet new problems that have presented themselves. The first directive of the Department of Defense (4215–10), dated November 2, 1952, was to establish the requirements of current and future needs for machine tools and metal-forming equipment.

The second directive of the Defense Department (4215–12), dated June 5, 1953, required that an inventory of Defense Department-owned machine tools and other production equipment be compiled and maintained. This directive requires that a central inventory be maintained and copies of the inventory reports be furnished the Director of the Office of Defense Mobilization.

A third directive issued by the Department of Defense on August 18, 1954 (4215.9), sets up a policy for recording and utilizing idle machine tools and other production equipment. This directive established a policy wherein it is essential that machine tools and other related production equipment owned or controlled by the Defense Department be managed and utilized in a manner which will:

(*a*) Provide maximum possible cross-servicing;

(*b*) Avoid unnecessary delays in current production programs;

(*c*) Permit sound decisions to be made in the expenditure of funds for such equipment;

(*d*) Provide a reserve of production capacity for immediate use in the event of mobilization;

(*e*) Permit sound planning to be done with the machine tools and related production equipment in connection with current and mobilization problems.

Nineteen months after the second Department of Defense directive was issued, there still is no complete inventory of the Government-owned idle machine tools and production equipment. The Department of Defense and the Office of Defense Mobilization have estimated that there are approximately 500,000 machine tools which cost more than $500 each. Of these, there has been compiled an incomplete listing of some 250,000 machine tools.

Furthermore, no single combined inventory of the equipment holdings of the entire Defense Department has even been authorized. The inventory requires a coded description including make, model, electrical characteristics, age, condition, and location of each machine. ODM frankly admits that the information is not complete in respect to all of the 252,957 machines so far reported. However, the discrepancies in coding and the missing information have been pointed out to the three departments and they are taking action to improve both the quality and the coverage of the inventory. Your committee understands that the single inventory has not been started primarily because the Department of Defense Advisory Committee on Fiscal Organization and Procedures (known as the Cooper committee) in its report relating to inventory activities made no mention of a single combined

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inventory of production equipment. The report did recommend central inventories in each one of the military departments, with summary control lodged with the Assistant Secretary of Defense (Supply and Logistics).

The ODM has recently been developing a revision of its defense mobilization orders on machine tools and production equipment in an effort to consolidate the provisions of existing orders into a single document and revise and add to them in the light of experience. It is planned to include a central inventory provision in this order which will be acceptable to the principal equipment-owning Government agencies directly concerned.

The 83d Congress appropriated $100 million for a reserve-machine-tools-and-facilities program. The Department of Defense advises that $84,624,326 will be used by the Air Force and the balance by the other services for the purchase of long-production lead-time machine tools for mobilization reserves. Your committee has been concerned how these funds will be spent, since the number of machine tools now owned, the types and the condition of the machines are not precisely known. The committee is well aware of the need for new special-type machines and the new and better machines now being developed.

It is the judgment of your committee that a central inventory of all Government-owned machine tools and production equipment is imperative and should be compiled as soon as possible, and maintained in a current condition. Without it, there can be no way to implement interchange of equipment between the various agencies of the Government and no way to provide a satisfactory basis for establishing requirements and setting up priorities in the event of another national emergency. Your committee is advised by the Department of Defense that at the present rate of compiling a central inventory, approximately 3 years will be needed, but, with adequate assistance, the inventory could be completed within approximately 1 year. Your committee has been unable to determine the dollar value invested by the Government in machine tools; however, it is estimated that the Government owns 15 percent of all machine tools in the United States, with an investment approaching $6 billion in aggregate acquisition cost of the equipment owned. Out of this total, the Defense Department accounts for an estimated 90 percent.

4. Utilization and disposal of machine tools by the Government

Several problem areas remain which are of major concern to your committee. Since it is generally agreed that a healthy machine-tool industry enjoying as much stability as possible is a prime requisite for industrial preparedness, it is necessary to examine all programs dealing with machine tools with that criterion. What decisions the executive officers of the Government make with regard to the utilization and disposal of machine tools now publicly owned will have all-important ramifications for the health of the industry.

Up to the present time the disposal of tools owned by the Government has not become critical because only obsolete production equipment has been considered for sale and only a small percentage of those items built since 1950 can be classified as obsolete. Within the next year or so this problem will increase in magnitude as obsolescence overtakes a larger share of the tools now under Government ownership.

It is absolutely essential that sound policies be followed in getting rid of these items or there is a risk of undoing all the work which had been done in the past 5 years by glutting the market and removing sales possibilities for civilian producers.

The Office of Defense Mobilization has issued a directive on this subject (ODM–18A) which requires that the Department of Defense submit listings of tools and production equipment to the ODM for its approval before such tools and equipment are sold as surplus. While your committee has been informed that this order has not been complied with in some instances, it has been told by representatives of the machine-tool industry that the industry has been consulted before such sales and has been able to work with Pentagon officials on disposal plans and timing. It is the hope of this committee that such cooperation will continue through the period when disposal becomes a more significant factor. On the other hand, it is questionable how defense authorities in the armed services or at ODM can make the basic decisions on what machines are surplus without a more adequate inventory than is now available.

More important today is the Government's policy on the utilization or storage of its usable tools. There appears to be no one policy governing this tremendously important area, and even the various policies which have evolved seem to be given differing interpretations and varying degrees of compliance. It is evident that just as the sale of the bulk of the Government's tools at any one time or over any short period would completely disrupt the normal operations of the industry, so could the use of such tools in private plants seriously lessen the private demand for tools from the builders.

In addition, other segments of industry stand to lose from ill-conceived plans for the utilization of these tools. There is at present a growing machine-tool-rental industry which leases equipment to concerns which are unable to pay for them in lump sums or who are unwilling to tie up their capital in outright purchase. This has become a substantial element in the metalworking industry and the Government is presently in competition with private rental plans. To date, however, producers have been allowed to rent publicly owned equipment only for use on Government contracts with a few exceptions, but more and more pressure is developing from the fortunate holders of such tools to extend such rentals for civilian production.

The determination of what constitutes a fair rent for Government-owned tools seems an impossible problem to solve with any degree of finality. The most common present rate is a fee of 1 percent per month of original acquisition cost, which at least has the merit of simplicity. On the other hand, private rental fees differ with the condition of tools and their estimated lifetime. In general, these rents range from 2 or 3 percent per month for the first 3 years. Thus, it becomes apparent that those holding Government tools are in a most favorable competitive position in bidding on further defense orders. Despite the work of many people who have tried to devise a mutually satisfactory system for determining rentals for furnished tools or production equipment, no agreement has been reached and it appears unlikely to your committee that any such formula can be devised. When these continuing points of irritation are added to the need for a healthy tool-building industry, your committee can only conclude

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that minimizing Government rental of tools to private industry is the only real answer.

There are now hundreds of thousands of Government tools in the hands of private business firms. This committee is aware of at least 1 company which is using some 2,500 such tools and of several manufacturers holding over 1,000 apiece. Naturally, independent concerns which do not enjoy such advantages complain to the committee that they are being beaten out in the competition for Government business by tools which they as taxpayers helped buy. Theoretically, such tools might be available to everyone, but it is practically impossible for the contracting officer to know whether some of the tools are in one bidder's plant for work on another contract or not. Your committee has checked and found many instances where machines put in factories for Navy contracts are being used on Army contracts, for example. In certain industries, the military has called in Government-furnished equipment, but sufficient pressure has developed or delaying tactics have been devised to retain those tools for longer periods.

If these machine tools are to be called in by the Government, there are four possibilities for handling them. In the first place, they can be disposed of, if they are obsolete or worn out and if the Government determines that they will have no need for such tools in case of future emergencies. Certainly, more and more tools will be falling into this category as the months pass.

Secondly, in certain specialized situations, the military may decide that the need for some defense item will be so urgent in time of war that time will be of the essence. In that case, the Government may negotiate with a potential supplier to set up a standby production line which can be put to work with the least time lag. The Government will pay rent for the space occupied by such tools and for maintenance of the production line in working order. It is not likely that a large percentage of the tools in question will be involved in this operation.

A third method of handling these Government tools will be for one of the armed services to ask a potential wartime supplier to store them on his own property or in a nearby warehouse, so that they may be readily accessible when needed. Periodic checks would also be made of such stored items and presumably obsolete or worn-out tools would be gradually eliminated. Here again rent would be paid by the Government for storage charges. As the number of "phantom orders" for essential military supplies is increased, it is possible that more tools will be put in storage by companies receiving such orders.

The fourth and last way to take care of tools not in use on production lines is to store them in central warehouses or storage depots under the aegis of the Government itself. They will be inventoried, checked as to condition, and be ready for use in an emergency. The bulk of the machines is likely to be placed eventually in such central storage and the tools obtained by the Government under pool orders, expansion turnbacks, and industry-supporting orders will probably be cataloged and stored where they may be requisitioned by the armed services when they are needed.

Some modifications of these four plans are possible. For example, some of the manufacturers who now face the removal of production equipment from their plants have sought to obtain approval of a

formula whereby they will retain the line in working condition without charge, in return for the use of specific machines for limited use in their civilian operations. Naturally, such a scheme meets with the hearty approval of cost-conscious officials who are working with limited budgets on this problem. On the other hand, it is possible that any sizable use of this plan would reduce the demand for private purchase of such equipment and thus limit the sales of the tool builders. In the long run, the cost of maintaining the machine-tool industry in a healthy condition might well outweigh the prospective gains from any such deal as outlined above.

It is thus apparent that there is no easy way to solve the problem of what to do with the roughly half-million machine tools owned by the various agencies of the Government. The immediate appeal of one line of attack may be counterbalanced by a longer range point of view. Your committee feels strongly that more top-level thought must be given to this subject and a uniformity of policy by all agencies and at all echelons is absolutely essential. This Nation can no longer afford, if indeed it ever could, not to let the left hand know what the right is doing.

5. Present status of mobilization planning for the machine-tool industry

Most of the broader policy considerations concerning the readiness of a vigorous and progressive machine-tool industry have been discussed in some detail in earlier pages. There is, however, a more specific question which remains to be answered: To what extent will the defects in mobilization planning which plagued the machine-tool industry in the first year or 18 months after Korea be avoided in a future crisis?

The 1952 study and report of this committee on the problems of the machine-tool industry in the midst of rearmament were replete with examples of every sort of error. Prices of tools were frozen at pre-Korean levels, while the costs of producing the machines had risen so much that the builders would have gone bankrupt producing them. Certain wage and salary controls gave every incentive for the skilled workmen to leave the machine-tool industry and head for the automobile or aircraft companies who were able to pay them substantially higher rates. The machine-tool industry was not given high enough priorities to obtain scarce materials, and the warehouses, their chief source of supplies in the past, were depleted of stocks with little hope of replenishment. Keymen were drafted into service when it appeared that their largest contribution would be to help break the machine-tool bottleneck. Finally, it was not until January 1952 that the 3 armed services got together to establish a preference or priority list of military end items. Until then, presumably all tools called for by the Government contracts were equally urgent, and no master list was available to assist the builders in deciding which part of their backlog to attack first.

A summary of the status of various control measures, including price, wage, and materials, will be presented in the following pages. On the specific actions taken to avoid recurrence of the 1950–51 chaos as it pertains to the machine-tool industry, your committee proposes to make a full study during this session of the Congress.

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6. Recommendations

For the reasons outlined in the body of this section, your committee feels that a comprehensive study of the machine-tool industry should be undertaken during 1955. Nonetheless, there are several recommendations which are in order at this time.

(*a*) A complete inventory of all Government-owned machine tools and other production equipment should be expedited. Furthermore, the tallies of the various agencies owning tools should be standardized and brought together in one master list which can be utilized by all branches of the Government as needed.

(b) No equipment owned by the Government should be leased for nondefense production unless and until it can be clearly established that such action will in fact add to our national mobilization readiness. Exceptions should be allowed only on an individual basis after a case-by-case finding.

(*c*) As soon as possible, Government machines should be withdrawn from the production lines of private contractors. Such withdrawal will call for a transition period during which contractors can replace Government equipment with their own.

(*d*) In the meantime, an expert group, including representatives of the industry, should study rental fees charged for the use of these machines with a view of bringing them more in line with private rental plans and with the aim of removing the relative competitive position of firms holding Government machines and those without such tools.

(*e*) The armed services, under the direction of the Department of Defense, should immediately draw up a preference list giving priority ratings to the various military items so that a guide will be available the moment it is needed. Naturally, this list should be updated frequently.

(*f*) A study should be made to determine the impact of imports of foreign-made machine tools upon the American industry.

(*g*) The Office of Defense Mobilization should ascertain immediately if its controls plans will expedite or hinder the rapid expansion of machine-tool production in an emergency.

Section C. Price Controls and Allocation of Scarce Materials

Since the middle of 1953, the situation with regard to economic stabilization, price controls, and the control over the distribution of vital materials has shifted from active operation to passive observation. With only minor exceptions, such as the present defense materials system which does no more than guarantee priority to military and atomic energy programs, no active controls program has been in effect for the past 18 months.

Your committee is hopeful that the Office of Defense Mobilization, the Business and Defense Services Administration, and the other executive agencies concerned with preparing for future emergencies have utilized this period of relative quiet to prepare plans for any contingency which will protect the economy of the Nation from the debilitating impact of chaos and confusion which have attended the initial phases of the last two war mobilizations.

The Senate Small Business Committee was just getting into operation at the time of the Communist invasion of South Korea in 1950.

Nonetheless, within a few weeks after the United States became involved in that war, hundreds of small manufacturers were visiting or writing the committee and its members, asking for assistance in meeting the shortages of steel, aluminum, copper, plastics and other basic materials which all but disappeared within a matter of days after the Korean war began.

It soon became apparent that it was the smaller producer who was most hurt by material shortages unless the Government took an active role in guaranteeing some sort of an equality of sacrifice. These smaller companies seldom were sufficiently diversified to remove the slack caused by shortage of one material by increasing production of other items. Furthermore, many of them were only intermittent customers of the prime producers of the materials, since they depended on warehouses and other sources of supply which were denuded of their stocks early in the rearmament effort. Then, too, the smaller firms were unable to receive military contracts in the headlong rush to rearm, since first things came first and the industrial giants naturally were called upon immediately to get into military production. All of these factors contributed to a situation where it appeared that thousands of competent small manufacturers would be forced to close their doors even though they represented a vast reservoir of productive know-how and capacity.

After the imposition and failure of several half-way control plans, the Controlled Materials Plan was finally instituted and became effective only after 18 months of delays and frustrations and serious strain on the financial resources of most of the smaller producers dependent upon scarce materials. By early in 1951, your committee was convinced that CMP was the only real answer to this very critical problem, and in its Report on Material Shortages (Rept. No. 77, 82d Cong., 1st sess.), submitted to the Senate on February 5, 1951, called for the immediate imposition of a controlled materials plan which would control the distribution of every pound of certain scarce materials, with nondefense supplies going fairly to all users on a historical-use pattern.

Within several months of your committee's report, top mobilization officials also became convinced that the imposition of CMP was imperative, but after that decision was reached, it took 8 or 9 more months before the plan became fully effective.

Such a delay cannot be allowed in the future. Your committee, therefore, has initiated a survey of the present status of planning in this field and proposes to make a full study of the progress of mobilization planning during the present session of Congress.

At the present time, the Office of Defense Mobilization reports that the Business and Defense Services Administration of the Department of Commerce is working on plans for controlling the flow of scarce materials in the case of an all-out mobilization and expects to complete this phase of its task by mid-1955. Your committee has been assured that these plans will take into account the peculiar vulnerability of smaller firms to materials shortages. As this committee has stated before, small businesses, like all citizens, abhor controls and redtape, but they recognize that the alternative in some situations is much less palatable than the medicine.

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In a recent report to the Joint Committee on Defense Production, the ODM stated that:

Interim plans have been completed and standby action materials, including standby regulations, orders, delegations of authority, etc., are ready to install suitable production and materials controls in the event of a stepped-up mobilization or at the outset of an all-out mobilization. These interim measures provide for establishing tonnage limitations on the major users of steel, copper, aluminum, and the ferroalloys for other than direct defense production purposes. They prohibit the commencement of new large construction projects without specific approval and forbid the accumulation of critical materials to build up inventories in anticipation of future shortages. Preferential treatment is provided for purchases of materials for maintenance and repair of the industrial plant, governmental activities, and similar essential civilian uses. In total, these measures will achieve a rapid initial stabilization of production and materials use levels without the development of elaborate control machinery. They will hold the industrial economy in rough balance to avoid the wild scramble for materials and general disruption of production experienced in the early stages of past emergencies.

FULL-SCALE CONTROLS FOR ALL-OUT MOBILIZATION

The purpose of this part of the program has been to develop, in advance, the production and materials control plans and preparedness measures that will be needed to install full-scale controls during successive stages of an all-out mobilization. The program has been scheduled for development through fiscal year 1955 and has as an objective the preparations necessary to expand the limited military defense materials system to include virtually all hard-goods production. It also includes the development of standby control orders to govern the distribution and use of a wide variety of industrial materials, components, and products which experience has shown will require the use of such controls in an all-out war. Both phases of this program are being carried out through the industry divisions of the Business and Defense Services Administration of the Department of Commerce using industry task groups selected from their respective industries. It is expected that the most important elements of this job can be completed during the first half of fiscal year 1955.[1]

In much the same way as materials controls, price and wage controls also proved to be vital instruments in meeting even a halfway mobilization effort. Even with such controls, smaller companies often found themselves in the middle of a price-cost squeeze; without them, the situation would have been even worse. On the other hand, your committee is certain that a careful study of World War II and Korean war stabilization programs will reveal methods of obtaining the same desirable end with fewer of the dislocating methods.

Here again, the Office of Defense Mobilization has assured Congress that full-scale study is being given to past experiences and that a staff is already preparing plans for future emergencies which should avoid many of the pitfalls which marked preceding crises.

PLANNING ACTIVITIES

During the past year the Office of Defense Mobilization has prepared draft measures to carry out the objective of a temporary 90-day freeze. These are available to the President should he decide to recommend such legislation to the Congress. Similarly, the agency has formulated a comprehensive general-freeze regulation which could implement temporary legislation, or which could be quickly adapted to any stabilization legislation which Congress might enact. Some work has been done on preparing drafts of longer range stabilization measures.

[1] P. 56, H. Rept. 1, Annual Report of the Joint Committee on Defense Production, January 5, 1955.

In approaching the task of stabilization planning the Office of Defense Mobilization has emphasized the concept of equality of sacrifice in each program. Also, an attempt is being made to insure a greater role for so-called indirect tax and credit controls in the event of another crisis, and to relate such controls to the more direct controls. Similarly, it is proposed to relate stabilization plans to production plans.

The experience of Korea demonstrated that the Government could not limit its preparation to the type of conditions surrounding World War II; nor can such preparations be limited to these two situations alone. As a consequence, it has now become necessary to plan for all types of situations, including atomic attacks upon the United States itself.

In order to benefit from the past two experiences of governmental price fixing the ODM has received the benefit of expert opinion from industry in all instances on a voluntary basis. In addition, other agencies of the Government have been asked to do specific work in particular fields of stabilization preparedness. Interested agencies also have been brought together by the Interagency Emergency Stabilization Committee to discuss major policy issues. This committee consists of ranking officials of the Treasury Department, the Department of Agriculture, Interior, and Commerce, and the Federal Reserve Board.[2]

Your committee plans to work with the economic stabilization officials of the Office of Defense Mobilization during the coming months with a view of guaranteeing that the lessons of the 2 mobilization efforts during the past 15 years have been well learned and that those experiences will be utilized in drawing up the standby plans which will be in readiness for future emergencies, whether of the limited or full-scale type.

[2] Ibid., p. 72.

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APPENDIXES

Appendix A

Meetings and hearings of the Select Committee on Small Business, U. S. Senate, 83d Cong., 2d sess., 1954

1954

Feb. 4 — Executive meeting, full committee. Considered annual report and committee program; adopted administrative procedure for handling and editing committee testimony.

Feb. 15 [1] — Hearing, full committee. Received report from Wendell B. Barnes, Administrator, Small Business Administration, on the activities of that agency during the first 6 months of its operations (not published).

Mar. 17 — Hearing, Subcommittee on Military Procurement. Participation of small business in military procurement.

Mar. 18 — Hearing, Subcommittee on Military Procurement. Participation of small business in military procurement (not published).

Mar. 19 — Hearing, Subcommittee on Military Procurement. Participation of small business in military procurement (morning session).

Do — Executive meeting, full committee. Adopted standing rules of procedure for conducting committee hearings; discussed miscellaneous matters (afternoon session).

Mar. 24 — Hearing, Subcommittee on Military Procurement. Participation of small business in military procurement.

Mar. 25 — Do.

Mar. 31 — Do.

Apr. 2 — Do.

Apr. 7 — Do.

Apr. 8 — Do.

Apr. 8 — Executive session, hearing, Subcommittee on Military Procurement. Heard Department of the Air Force representatives on the procurement of gun heaters.

Apr. 9 — Executive session, hearing, Subcommittee on Military Procurement. Heard representatives from the Departments of Defense, Army, Navy, and Air Force on small-business participation in research and development contracts; effectiveness of the joint determination program between the departments and the Small Business Administration; certificates of competency; and other matters.

Apr. 13 — Hearing, Subcommittee on Military Procurement. Participation of small business in military procurement.

Apr. 14 — Do.

May 13 — Hearing, full committee. Heard Wendell B. Barnes, Administrator of the Small Business Administration, on the lending policy of SBA.

May 19 — Hearing, Subcommittee on Military Procurement. Navy procurement of tugboats (morning and afternoon sessions).

May 20 — Do.

July 29 — Executive session, hearing, full committee. Department of the Navy representatives heard on procedures and regulations governing the procurement of diamonds for Navy stores and exchanges.

[1] All hearings were public except as otherwise indicated.

APPENDIX B

List of publications issued by the Select Committee on Small Business, United States Senate, 83d Congress, 2d session, 1954

HEARINGS

Military Procurement Program, 1954: Participation of Small Business in Military Procurement; March 17, 19, 24, 25, 31, April 2, 7, 8, 13, and 14, 1954.
Small Business Administration Loan Policy; May 13, 1954.
Navy Procurement of Tugboats: Participation of Small Business in Military Procurement; May 19 and 20, 1954.

REPORTS

Senate Report 1092: Annual Report of the Select Committee on Small Business; March 25, 1954.
Senate Report 2487: Military Procurement, 1954: Participation of Small Business in Military Procurement; August 14, 1954.
Senate Report 2506: Navy Procurement of Tugboats; August 24, 1954.

APPENDIX C

DEPARTMENT OF DEFENSE DIRECTIVE 3005.3 AND EXCHANGE OF CORRESPONDENCE RELATING THERETO

DEPARTMENT OF DEFENSE DIRECTIVE

No. 3005.3—December 7, 1954

Subject: Maintenance of the Mobilization Base.
Reference: Office of Defense Mobilization Order DMO VII–7, as amended.

I. PURPOSE

The purpose of this directive is to integrate Department of Defense procurement policy with industrial mobilization plans in order to maintain a sound mobilization base.

II. POLICY

The referenced document prescribes the Government policy for maintaining the mobilization base. With respect to current procurement particular attention is invited to paragraph 3A, which provides in part:

"1. Procurement agencies shall integrate current procurement with their industrial mobilization plans to the greatest possible extent with the objective of supporting the mobilization base within authorities and funds available.

"2. Data assembled on essential mobilization suppliers by the industrial mobilization planning of these agencies shall be used in planning current procurement. The policy of using contractors and facilities essential to the mobilization base is considered to be in the best interest of the Government. Suppliers that are deemed to be part of the mobilization base normally will be invited to participate in appropriate current procurement."

III. ACTION

In furtherance of this policy and to integrate current procurement with military mobilization plans, the military departments are requested to review proposed procurement of items contained in the Department of Defense preferential planning list. Responsibility for such review should be maintained at the level of the procurement Secretaries or their authorized designees. Such review should take into consideration the following:

(*a*) Maintaining multiple sources of supply;
(*b*) Geographic dispersal;
(*c*) Avoidance of undue concentration of contracts in a few leading suppliers;
(*d*) Multiple awards;
(*e*) Preservation of essential skilled labor forces;

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(*f*) Utilization of existing open industrial capacity;
(*g*) Preservation of essential management organization and know-how;
(*h*) Maximum subcontracting; and
(*i*) Any other factors relevant to maintaining a sound mobilization base.

In carrying out this program it is expected that the authority contained in sections 2 (c) 1 and 16 of the Armed Services Procurement Act will be utilized. In this connection comparative price experience shall be utilized to negotiate the best possible price for the Government.

IV. IMPLEMENTATION

Each military department will proceed with the revision of regulations, procedures, and instructions as necessary to implement the provisions hereof and will submit such revised regulations, procedures, and instructions in duplicate to the Assistant Secretary of Defense (Supply and Logistics) within 30 days after the date of this directive.

V. REPORTS

Each military department will report actions taken pursuant to this directive to the Assistant Secretary of Defense (Supply and Logistics). Such reports shall be submitted at least every 90 days.

VI. EFFECTIVE DATE

This directive shall become effective immediately.

C. E. WILSON,
Secretary of Defense.

UNITED STATES SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
December 9, 1954.

Hon. CHARLES E. WILSON,
The Secretary of Defense,
The Pentagon, Washington, D. C.:

As chairman of Senate Small Business Committee, I am vitally concerned about possible ramifications of Department of Defense Directive 3005.3, dated December 7, 1954, relating to maintenance of mobilization base. All agree that national defense demands healthy economy and as broad an industrial base as possible. But cited directive seems to establish a preferential list of approved firms who will receive bulk of defense contracts with no competition allowed from firms not on select list. Small business firms have always represented a mobile and potent productive force in times of emergency. Therefore, I feel it unwise to preclude them from mobilization production or planning at any stage. Paragraph 2 of section 2 of cited directive tells of importance of "essential mobilization suppliers." How were these firms chosen? Was the Small Business Administration consulted in the preparation of lists of essential suppliers as provided under section 211 of Small Business Act of 1953? How can smaller firms become essential mobilization suppliers? Senate Small Business Committee also disturbed by provision of directive which calls for exclusive use of negotiated contracts under sections 2 (c) 1 and 16 of the Armed Services Procurement Act and implies end of price competition on military contracts. How will this directive affect the Defense Department-Small Business Administration joint determination program which was authorized by Congress under Small Business Act of 1953? How will the new policy affect small business programs of the military departments? To what percentage of defense contracts, by number and by dollar value, will the new policy apply? On behalf of Senate Small Business Committee, I thank you for your attention to these matters.

Sincerely,

EDWARD J. THYE, *Chairman.*

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ASSISTANT SECRETARY OF DEFENSE,
SUPPLY AND LOGISTICS,
Washington 25, D. C., January 8, 1955.

Hon. EDWARD J. THYE,
United States Senate.

DEAR SENATOR THYE: Your telegram of December 9, 1954, to Secretary of Defense Wilson, voicing your concern about possible ramifications of Department of Defense Directive 3005.3, has been referred to me for consideration and reply.

In your telegram you observe that the "cited directive seems to establish a preferential list of approved firms who will receive the bulk of defense business with no competition allowed from firms not on the select list."

I can reassure you fully on this point. The preferential planning list referred to in the directive is a list of items, not of suppliers. The list is established by Department of Defense Directive 4005.6. It is a list of approximately 1,000 critical defense end items, mostly complex and expensive ones, with respect to which mobilization planning is considered to be of special importance to the national defense.

The effect of the subject directive is to emphasize certain criteria in the procurement of items on this list which will assure the maintenance of the mobilization base for these items. The directive will not operate to limit procurement of these items to a few "selected" suppliers, to reduce competition nor to exclude small business from participation. On the contrary, to the extent required by the criteria, the directive will operate to spread the procurement over multiple dispersed sources.

In general, the items on the preferential planning list are large, complicated and expensive weapons and other items beyond the capacity of small firms to produce. Since the application of the subject directive is limited to items on this list, its possible impact on the small business community is proportionally limited. In the case of items on the list which are in the small business potential, however, the interests of small business suppliers of such items will be protected by defense policies on behalf of small business in the same manner as for items not on the list.

In reply to your question as to how "essential mobilization suppliers" are "chosen," successful competitors for the supply of essential items who have supplied satisfactorily items considered critical or who may do so in the future and whose availability as a source of supply in the event of mobilization is considered essential are or will be regarded as "essential suppliers." Small firms equally with large firms may establish themselves as in this category by the successful production of critical items.

With respect to the question about consultation with the Small Business Administration as provided by section 211 of the Small Business Act of 1953, since the preferential planning list is, as previously mentioned, a classified list of items (and not of "essential suppliers"), for the production of which items all suppliers with the capacity to supply them are eligible, the answer is naturally in the negative.

In your telegram you state that you are also disturbed by the provision of the directive which calls for exclusive use of negotiated contracts and implies the end of price competition on military contracts.

It is certainly a matter of serious concern to us if members of your committee are inclined to suppose that the negotiation of military procurement in any way implies an absence of price competition. It is the clear policy of the Department of Defense, as stated in the Armed Services Procurement Regulation 1–302.2, that "Irrespective of whether the procurement of supplies or services from sources outside the Government is to be effected by formal advertising or by negotiation, competitive proposals ('bids' in the case of procurement by formal advertising, 'quotations' in the case of procurement by negotiation) shall be solicited from all such qualified sources of supplies or services as are deemed necessary by the contracting officer to assure such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the department concerned, and thereby to obtain for the Government the most advantageous contract—price, quality, and other factors considered."

To further allay your concern in this connection it is appropriate to add that items such as those on the preferential planning list have been largely procured by negotiation under prior existing policy and that this directive does not represent a change of policy likely to increase procurement by negotiation to

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any important degree. Still further I may mention again in this connection that the subject directive relates only to items on the preferential planning list and has no bearing on the procurement of items not on the list, or to components of the items which are on the list. These are the areas of extensive participation by small concerns.

Your telegram inquires how the directive will affect the joint determination program and the small-business programs of the Department of Defense. For the reasons set forth above, it is believed that the directive will have little effect, and certainly no adverse effect, on these programs.

With respect to the percentage of defense contracts to which the new policy will apply, it is estimated that the items on the preferential planning list involve approximately 70 to 75 percent of defense dollar expenditures, but only 5 to 10 percent of the number of procurement contracts.

In summary, it appears that the concern about the implications of the directive derive largely from the mistaken assumption that the list referred to in the directive is a list of suppliers rather than of items, and from the further apparent assumption that the application of the directive is across the board rather than limited to this list. It is my view that this directive will not operate to the detriment of the small-business community. I trust that after a consideration of these comments the members of your committee will share this view.

Please be assured of my continued active interest in the welfare of small business.

Sincerely,

T. P. PIKE.

UNITED STATES SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
January 17, 1955.

Hon. T. P. PIKE,
Assistant Secretary of Defense, Washington 25, D. C.

DEAR MR. SECRETARY: This will acknowledge receipt of your letter of January 8, which was written in answer to my telegram of December 9, 1954, addressed to Secretary of Defense Charles E. Wilson. This correspondence has been concerned with the Defense Department Directive No. 3005.3 issued December 7 on the maintenance of the mobilization base.

At the outset, let me assure you that I do not now, nor have I, operated on the assumption that the Defense Department issued that directive with any intention of slighting the interests of small business. Furthermore, I well realize that the directive can be used either to assist or to hinder small business according to the manner in which it is administered.

On the other hand, I do wish to point out some of the possible ramifications of the directive which occurred to me in my capacity as chairman of the Senate Small Business Committee:

(1) Your letter states that the directive refers to "a list of items, not of suppliers." I call your attention to sections I and II of the directive, which speak of the "mobilization base," which can refer only to suppliers, not to items. More particularly I point out that part 2 of section II reads as follows: "Data assembled on essential mobilization suppliers by the industrial mobilization planning of these agencies shall be used in planning current procurement." This sentence clearly states that firms deemed "essential" by your planners shall receive the great bulk of current procurement.

(2) Your letter states that small firms may establish themselves as "essential suppliers" by the "successful production of critical items." But, how can such firms produce those items under Directive No. 3005.3, which says that those already deemed essential suppliers will receive current procurements? This could result in the endless chain in which the small-business man could not find an open link.

(3) Your letter states that the Small Business Administration was not consulted in the formulation or issuance of this directive because it concerned a classified list of items. Two questions are raised by your reply: Why is not the SBA cleared to work with another executive agency on a matter of such importance to the Nation? If it is determined that the Administrator of the Small Business Administration should not be allowed to see such a listing, why can the Defense Department not work with him on the broad impact of this directive (which is not classified) without reference to the "classified list of items"?

(4) Your letter states that "the subject directive relates *only* to items on the preferential planning list and has no bearing on the procurement of items not on the list, *or to components of the items which are on the list.*" [The italic is mine.] In the first place, it may be misleading to use the word "only" when we are referring to 70 to 75 percent of all defense expenditures by your estimate. Secondly, the armed services, particularly the Air Force, have now adopted the so-called weapons component system of procurement by which the prime contractor receives a contract to supply a fully equipped item and, thus, assumes the responsibility himself for obtaining the components which have previously been procured by public officials. Thus, the possibility of receiving contracts for "components of the items which are on the list" also may seem rather forlorn to the smaller firms which would like to participate in supplying the armed services.

(5) Your letter states that "negotiation of military procurement in [no] way implies an absence of price competition." The General Accounting Office has taken the position in hearings before our committee that the advertised procurement method, in cases where advertising is possible, guarantees the best price to the Government and the best opportunity for small firms. Specifically, I note that the last sentence of section III of the directive says "comparative price experience shall be utilized to negotiate the best possible price for the Government." Where there are numerous bidders on a contract, the bidding itself will almost always bring the best price, but only in the case where the number of bidders is limited is there need to resort to the record books to determine what price had been paid in the past for that item.

(6) The subject directive states that the military departments will report actions taken under the directive every 90 days to your office. I hope that you will take steps to guarantee that such reports are forthcoming and that you will be able to review them on a case-by-case basis.

In closing, let me assure you that this committee and I, personally, recognize that we must have our industrial machine in instant readiness to meet any emergency. We will cooperate in that effort in every way. I am not criticizing; I am merely seeking assurances that a most important part of our industrial strength and our economic well-being is fully protected. Small business firms do not have representatives in Washington and in every procurement center. The Senate Small Business Committee and its counterparts in the House of Representatives and in the executive branch of the Government are charged with the responsibility of making certain that the interests and the productive abilities and capacities of these small companies are never underestimated or overlooked.

With best wishes,

Sincerely,

EDWARD J. THYE, *Chairman.*

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
SUPPLY AND LOGISTICS,
Washington, D. C., January 28, 1955.

Hon. EDWARD J. THYE,
United States Senate.

DEAR SENATOR THYE: Your letter of January 17, 1955, in further reference to Department of Defense Directive 3005.3 has been received. I see that our letter of January 8 left a number of points insufficiently clarified, and I would like to comment further on the points you have raised using the same numbers to designate them as were used in your letter:

(1) I agree with you that the language of this directive is susceptible of differing interpretations. This is due in part to the fact that paragraphs 1 and 2 of section II are quotations of general policy excerpted from DMO VII–7 of the Office of Defense Mobilization. The Department of Defense, as you know, is bound by this policy although not the author of it.

As you suggest, the broad language under section I (PURPOSE) and section II (POLICY) about the mobilization base suggests that the directive may be taken to be broad in its application. Section III, however, says that the "action" required is a review of "proposed procurement of items contained in the Department of Defense preferential planning list." This is understood to mean that the directive is limited in application to items on this particular list. This interpretation has now been confirmed as the correct understanding of the impact of the directive. You may recall that there was some delay in answering your

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telegram. This delay was caused by our wish to fully clarify the application of the directive in our own minds before drafting our reply to you.

Since the preferential planning list is a list of less than 1,000 items, most of which are highly complex and expensive weapons and which, because of their complexity and cost, have never been supplied by small firms, and further because the application of the directive is now clearly understood as being limited to this list, we feel no hesitancy in saying that the implementation of this directive is most unlikely to have any unfavorable impact on procurement from small business concerns. The effect which it has, if any, will be small and it will be incidental to the objective of maintaining the mobilization base of sources of critical items.

(2) "Essential supplies," as the term is used in section II, paragraph 2, refers to firms which are known to be competent to supply critical items in an emergency and with which mobilization planning is in effect. Mobilization planning for critical items is continuing and firms which have the capability will find the military departments interested in accomplishing such planning. Small firms with the requisite capacity may plan for mobilization production as well as large firms. We believe it is common prudence that planned mobilization sources be "invited to participate," i. e., compete for current procurement. As previously pointed out, however, there are few potential suppliers among small firms for items on the preferential planning list.

(3) The fact that the Small Business Administration was not consulted in the preparation of this directive was not related to the fact that the preferential planning list is classified material. The term "classified" could have been omitted from our letter of January 8 in this connection without affecting the sense. For reasons set forth in paragraph (1) above, this directive is not regarded as one having significant impact on small-business concerns. It is, therefore, not considered to be an action on which it would be appropriate, necessary, or desirable to seek the consultation of the Small Business Administration. This directive is not a matter of small business policy, but rather a matter of general military procurement policy. I recognize that there is a very broad sense in which every military action that affects business to some degree affects small business directly or indirectly. All procurement is in this category. By this test, no action of the military departments in the area of supply and logistics would be proper without the prior advice of the Small Business Administration. Such an interpretation would be extreme and we do not believe it to be the sense of the law, nor would it be a practical procedure consistent with military responsibilities.

(4) We did not intend to imply by the use of the word "only" that the volume of purchases affected by this directive measured in terms of dollars was unimportant. It is, as you point out, very large. We intended to emphasize that the end items on the list (and such components as are on the list) are, almost without exception, not within the small-business potential and hence the application of the directive will have little impact on small business.

(5) We did not intend to imply that there is a broad and intense competition in negotiated procurements as in advertised procurements, but merely to emphasize that the fact that a procurement is accomplished by negotiation should not be taken as meaning that there was an absence of price competition. The procurement officer is directed by policy to secure a maximum of competition in such procurements insofar as the limiting circumstances permit him to do so. In the extreme case of procurement from a sole source competition is precluded.

(6) The steps to provide for an adequate report have already been taken. They are set forth in Department of Defense Instruction 3005.4, a copy of which is enclosed for your information.

I am conscious of the very proper concern that you, as chairman of the Senate Small Business Committee, feel for the importance of giving an equitable competitive opportunity to small-business concerns. The assurance of such an opportunity is presently provided for by a number of Department of Defense policy statements, including Department of Defense Directive No. 4100.10, "Small Business Policy," a copy of which is enclosed. This directive explicitly provides for an equitable competitive opportunity to small concerns in securing contracts as prime contractors for items in the small-business potential. With respect to subcontracting, the interests of small firms are currently protected by contract clauses requiring prime contractors to subcontract to small business to the maximum extent possible consistent with the efficient performance of the contract (Armed Services Procurement Regulation 7–104.14). The interests of small-business firms as mobilization sources are provided for in section V, subsection E, of the Depart-

ment of Defense Directive 4100.10 (enclosed herewith). We do not believe that the Department of Defense Directive 3005.3 detracts from or conflicts with the policies (on behalf of small business) set forth in Department of Defense Directive 4100.10 and Armed Services Procurement Regulation 7–104.14.

The understanding point of view expressed in your closing paragraph is especially appreciated. As you correctly say, we in Defense have an overriding responsibility to consider the national defense above other considerations. Subject to these responsibilities, we are aggressive in our efforts to assure a consistently equitable opportunity to the small firms of the Nation. We do not believe that you need to feel any concern that these interests have in any way been neglected in the present instance.

We congratulate you on your constant interest in the welfare of the small concerns of the country and assure you of our continued desire to be of service.

Sincerely,

R. C. LANPHIER, Jr.,
Deputy Assistant Secretary of Defense
(Supply and Logistics).

APPENDIX D

DEPARTMENT OF DEFENSE DIRECTIVE 4100.16 PERTAINING TO GOVERNMENT COMPETITION WITH BUSINESS

DEPARTMENT OF DEFENSE INSTRUCTION

No. 4100.16—March 8, 1954

Subject: Department of Defense program for review of commercial- and industrial-type facilities (DD–S & L (AR) 140).

References:

(*a*) Department of Defense Directive No. 4100.15.
(*b*) Department of Defense Directive No. 4000.8, paragraph III–B.
(*c*) Department of Defense Directive No. 4000.11.

Enclosures:

1. Cost Principles for Use in Determination of Product and Services Costs of Industrial and Commercial Facilities Owned and Operated by the Department of Defense.
2. Subject Matter To Be Included in the Summary Reports of Analysis of the Department of Defense Commercial and Industrial Facilities.
3. First Increment of Commercial and Industrial Facilities To Be Reviewed.

I. PURPOSE

This instruction implements references (*a*) and (*b*) and prescribes the basic program and guidance for the continuance in operation or the establishment of commercial- and industrial-type facilities by the military departments, agencies, and offices of the Department of Defense. Specifically, this instruction is designed—

A. To provide that the Secretary of each military department initiate a continuing review program and make necessary determinations to achieve maximum economy through minimum facility and manpower expenditures for commercial and industrial operations without impairing military effectiveness.

B. To provide that Department of Defense departments, agencies, and commands effectively apply cross-servicing principles to items or services produced or performed by Department of Defense owned and operated commercial and industrial facilities.

II. DEFINITION

As used in this instruction, commercial- or industrial-type facilities are those devoted to an activity which normally might be performed by private industry, except commissaries, post exchanges, and nonappropriated fund activities. The term "facility" as used herein means an entire installation, a portion of an installation, or an activity or function being performed therein.

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III. SCOPE AND APPLICABILITY

A. The provisions of this instruction apply to all commercial and industrial facilities (as defined in sec. II above) owned and operated, or proposed to be established and operated, by Department of Defense departments, agencies, and commands, exclusive of—

1. Those physically located within an active zone of action designated by the Secretary of Defense.

2. Those that are an organic part of an authorized combat unit which is designed to be deployed to a zone of action.

3. Living quarters (officer and enlisted) and mess halls.

4. NATO-financed facilities. (While excluded from this program, consideration should be given, however, to the maximum feasible utilization of facilities made available under NATO-financed programs in Europe.)

B. Commercial or industrial facilities technically within the definition set out above but regarded as borderline inclusions may be specifically exempted from the provisions of this instruction upon approval by the Secretary of Defense.

IV. PROGRAM AUTHORITY AND RESPONSIBILITY

A. The Secretaries of the military departments will—

1. Be responsible for the analyses and determinations pertaining to military commercial and industrial facilities and similar privately owned and operated facilities. The analyses of privately owned and operated facilities usually will be limited to the extent required to reasonably determine their ability to produce the product or perform the service—

(*a*) At or above the level of performance in the military facility.

(*b*) At an equal or lower price than if the product or service were furnished by a Government-operated facility.

2. Require each such analysis and determination be conducted in accordance with the Department of Defense policy and criteria set out in references (*a*) and (*b*). Such analyses must be objective and conducted on an impartial basis. They must withstand a most searching examination. Full consideration shall be given to—

(*a*) Obtaining the product or service from private enterprise.

(*b*) Merging similar operations or functions being conducted at an installation.

(*c*) Merging similar operations or functions being conducted at several adjacent locations at a single installation within the area.

(*d*) Merging similar operations or functions being conducted at several locations by the military departments into a facility of one of the departments.

(*e*) Releasing the facility or placing the installation, or a portion thereof, in a "standby" status with a reduction in commercial and industrial-type activity to the extent that only minimum essential housekeeping and surveillance functions are performed.

3. Issue such implementing regulations as may be required to insure, with respect to cross servicing within and between Department of Defense military departments, that:

(*a*) The products or services produced or performed by the commercial and industrial facilities of one military department are made conveniently available to other Department of Defense facilities.

(*b*) The commercial and industrial facilities of other Department of Defense and Federal agencies are utilized wherever such use will not decrease military effectiveness or result in a higher cost.

(*c*) Authority to negotiate and conclude cross-servicing agreements between Department of Defense agencies may be delegated to the heads of the facilities or commands directly involved, due regard being given to—

(1) The desirability of maximum simplification.

(2) The need to integrate the local requirement with the overall requirement of the military departments concerned.

4. (*a*) Secure the approval of the Assistant Secretary of Defense (Properties and Installations) prior to establishing or acquiring new, or expanding existing physical plants, used for the performance of commercial and industrial-type operations. Requests for approval should be accompanied by:

(1) A certification (*a*) that the proposed facility is in accord with the policy stated in reference (*a*), identifying the factor in section III thereof which forms the basis for such certification; and (*b*) that the required needs cannot be effectively served by the existing facilities of all departments.

(2) A justification including, but not limited to, information required by the applicable items contained in enclosure 2.

(*b*) Normal fluctuations in the level of operations carried on in existing physical plants performing commercial and industrial-type operations, as well as resumption of operation in plants previously inactivated for reasons other than compliance with references (*a*) and (*b*) or this instruction (unless involving changes in physical plant in excess of the fiscal limit authorized to the Secretaries of the military departments) are excepted from this instruction provided that reactivation of bakeries, laundries, and dry-cleaning plants will require approval by the Assistant Secretary of Defense (Properties and Installations) in accordance with current directive on the subject. However, in the case of such resumptions or reactivations, the criteria in references (*a*) and (*b*) and the guides set forth in this instruction shall apply.

5. Require a cost study of each facility's operations to be made in accordance with the provisions of enclosure 1—Cost Principles for Use in Determination of Product and Services Costs of Industrial and Commercial Facilities Owned and Operated by the Department of Defense—and included as an integral part of the review whenever the criterion contained in paragraph III *b* of reference (*a*) is a pertinent factor in justifying the establishment or continuation of an activity. When it can be demonstrated that costs will have no influence in the determination as to the continuation or establishment of Government-operated commercial and industrial facilities, the cost projection need not be made unless specifically required by a reviewing authority.

6. Require official analyses reports and determinations made thereon to be maintained as an official record at a central point, or points, within each military department and assure ready access to the complete reports to the offices of the Secretary of Defense.

V. IMPLEMENTATION

A. In view of the magnitude of this undertaking, the program may be implemented progressively by selecting and defining facilities for review. The first increment shall consist of the continental United States facilities listed in enclosure 3. It is not intended that this listing prevent any service from conducting reviews of other types of commercial and industrial facilities either within or outside the continental United States.

B. Within 30 days of the date of this instruction, the military departments shall prepare such implementation as they consider necessary with copy to the Assistant Secretary of Defense (Supply and Logistics). Departmental implementations will include:

1. The designation of the authorities responsible for making the departmental analyses and determinations;

2. That the analyses and determinations of facilities will be completed as indicated in enclosure 3.

VI. REPORTS

A. Within 45 days of the date of this instruction, each military department will have compiled and made available to the Assistant Secretary of Defense (Supply and Logistics), a list of commercial and industrial facilities, indicated in enclosure 3, owned and operated by its department, detailing by types of facilities:

1. Name and address of facility;

2. Name and address of command or organization to which facility is directly responsible;

3. Principal products or services produced or performed.

B. Summary reports of each commercial-industrial-type facility analysis will be maintained as an official record at a central point within each respective military department. The subject matter to be included in the summary report is indicated in enclosure 2.

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C. Each military department will inform the Office of the Secretary of Defense, in the report submitted in accordance with reference (*c*), which facilities have been discontinued or curtailed as a result of this program and policies contained in references (*a*) and (*b*).

D. Future review requirements:

1. Additional reviews of other facilities will be scheduled from time to time by the Assistant Secretary of Defense (Supply and Logistics), in coordination with the military services and all interested staff agencies of the Office of the Secretary of Defense.

2. It is not within the intent of this instruction to require on-site surveys (field visits) to all facilities encompassed by this program. Such surveys should be made only as necessary to ascertain facts required to enable sound review of a facility, and the application of all policy and criteria in references (*a*) and (*b*).

VII. REPORT CONTROL SYMBOL

Report control symbol DD–S&L (OT) 296 has been assigned to the reporting requirement of paragraph VI. A. Report control symbol DD–S&L (AR) 140 has been assigned to the other reporting requirements of this instruction.

VIII. EFFECTIVE DATE

This instruction is effective immediately, and all previous instructions not consistent herewith are accordingly modified.

C. S. THOMAS,
Assistant Secretary of Defense (Supply and Logistics).

[4100.16 (enclosure 1)—March 8, 1954]

COST PRINCIPLES FOR USE IN DETERMINATION OF PRODUCT AND SERVICES COSTS OF INDUSTRIAL AND COMMERCIAL FACILITIES OWNED AND OPERATED BY THE DEPARTMENT OF DEFENSE

I. PURPOSE

It is the purpose of the following to furnish guidance for the military departments in cost-accounting methods to be employed to assist in formulation of decisions concerning cost servicing, establishment, or continuance of such facilities in or under the Department of Defense in accordance with Department of Defense Instruction No. 4100.16. The military departments are authorized to develop, as required with the cooperation of the Office of the Secretary of Defense, more specific cost criteria applicable to the particular types of activity or operation under study.

II. BASIS OF REPORTING COSTS

A. Reports of costs estimates, in terms of units of product or service, as well as aggregate amounts or elements of cost, are required to be made under projected conditions. Actual cost data may be used in making such estimates only to the extent that this basic principle is observed. Such cost estimates should represent, therefore, estimated expected costs based on practical considerations of estimated operating programs of planned production in terms of labor, material, and facilities requirements for units of product or services.

B. To the extent feasible, cost estimates should be validated by actual cost records for the installation if it has been operated in the past, or by actual cost reports of a comparable installation if one exists—taking into consideration in either case the difference in workload and elements of costing as hereinafter outlined.

C. When the cost studies being made are for the purpose of making decisions involving selection of one or more facilities among several of the same type for continuing use, or the closing of higher cost facilities, it may be desirable that the cost data of all facilities under study be susceptible of more or less detailed comparisons as well as be determined on an overall comparable basis. Therefore, when cost data from two or more similar facilities are required for these purposes, more specific instructions on cost estimating than are provided in these instructions should be prepared. In general, it must be observed, difficulties of cost estimating, as well as basic differences in facilities or operating circumstances, may make it impossible to obtain complete and fully accurate cost comparability between similar facilities.

D. Reports of cost estimates of a given installation or facility should show the aggregate cost for the planned production classified by direct labor, direct material, and overhead for the projected period. Where overhead is estimated on a departmental or cost-center basis, such departmental overhead cost estimates should be shown. Estimates of the aggregate and unit costs of product or products of the installation or facility should also be shown in the report of cost estimates; the sum of the estimated total costs of all products should be in agreement with the aggregate cost of labor, material, and overhead for the total planned production.

III. REVIEW AND CERTIFICATION OF COST DATA

Cost data for each establishment prepared for the purposes stated above should be reviewed and certified as to reasonableness by the chief of the departmental audit agency after preparation by the establishment or operating agency concerned.

IV. DEFINITION OF COST

A. All elements of cost which are incurred by the Government in making a product or rendering a service at an industrial- or commercial-type installation shall be included, whether or not those costs are borne by the activity or immediate department concerned or are normally considered in the cost-accounting system employed in the activity.

B. Where the activity is or is planned to be part of a larger installation which furnishes supervision or supporting services to it, the estimated costs of all such supervision and services shall be included in the cost estimates. On the other hand, the cost of services furnished or to be furnished by the industrial activity to other missions of the installation do not contribute to product costs, and should be excluded from cost estimates. Moreover, there shall also be excluded from the estimates supporting administrative overhead costs of supervisory or staff offices at higher echelons outside the immediate location of the activity concerned.

C. Cost estimates shall not include hypothetical costs, such as taxes (except to the extent payments are made in lieu of taxes), nor shall they include the element of profit, as would be required in order to match all the elements that may be found in price comparisons with similar private commercial operations.

V. ELEMENTS OF COST

Subject to the above overall criteria for determining costs, the following elements shall be included. Failure to mention any specific item is not intended to imply that it shall not be included.

A. Personnel services

1. *Civilian personnel.*—Services performed by civilian personnel will be priced at the actual current rate of pay or estimated at an average rate per service grade. Such pay shall include a factor for leave computed in accordance with the principles prescribed in Department of Defense Directive No. 7410.1 dated February 11, 1952.

2. *Military pay and allowances.*—Military personnel services shall be priced at the departments' currently published standard military compensation rates. These rates have been prescribed for statistical costing of military services for work performed at industrial establishments financed by industrial funds and are available for application in all other areas for accumulation of cost estimates.

3. Personnel services (whether civilian or military) will be classified as direct labor when the costs are incurred in performing work identifiable with a product. Labor costs should be estimated on the basis of the best available work measurement and performance data. While labor cost estimates for such factors as machine setup, rework time, waiting, and other excess time should be treated in most cases as indirect costs, it will be permissible to include these factors as direct costs, if the cost estimating methods are not so refined. Supervision, maintenance, and similar personnel services should be classified as indirect costs.

B. Materials and supplies

1. Direct materials include all items purchased, supplied, maunfactured, or fabricated which enter directly into the end product. Wherever feasible, estimates of material quantities required for production should be based on estimated or actual bills of material. In addition, proper consideration should be given to costs of reasonable material overruns, spoilage, and defective work.

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Such material estimates should be costed by applying the current replacement price to the quantity required as may be established by published servicewide catalogs or price lists or other available sources of current market prices. Freight, transportation, and material handling costs shall be included, whether such costs are treated as direct or indirect. Additionally, a factor shall be added for the estimated expense of procurement, warehousing, or other elements of supply administration at depot level related to categories of material to be acquired from a stock fund of one of the departments or from appropriation purchase or other account. Government-furnished material received for assembly or fabrication shall be costed in the same manner as other materials.

2. In calculating the total costs of materials, there shall be deducted all trade discounts, rebates, and other allowances. Deductions will be made from either material costs or aggregate costs for cash discounts or other credits including estimates for recovery or sale of production scrap.

3. Estimates of costs of indirect materials and supplies may be calculated by applying experience ratios to the cost of direct materials or by other methods in estimating indirect costs.

C. Indirect costs (overhead)

1. Indirect or overhead costs in industrial or commercial-type installations generally fall into the following categories:

(*a*) Manufacturing or production expenses—i. e., indirect cost of production departments.

(*b*) General and administrative expenses—costs incurred in general management and supervision of the installation as a whole.

2. Budgets for indirect costs should be projected on the basis of the planned schedule of production. If varied products are to be produced indirect costs should be departmentalized and separate department overhead rates should be estimated. Where only one product is to be produced (or where all products are generally subject to the same processing) an overall overhead rate for the plant will suffice for product costing purposes. The overhead rates may be applied to direct labor dollars or hours as preferred for cost allocation to the product.

3. In the event of future changes in the planned volume of production, it would be advisable initially to segregate the fixed and variable overheads to the extent feasible, so that the basis for estimating different overhead rates for several production levels may be available for future estimates if needed.

4. Some special items of overhead for inclusion are the following:

(*a*) Interest on invested capital: Interest on capital estimated to be normally invested in inventories and plant and equipment used in production of the end product is to be included as a cost of operation. Such interest shall be computed at the current rate for long-term Treasury obligations. The rate used and the amounts of invested capital should be disclosed in the cost estimates.

(*b*) Depreciation:

(1) Depreciation of plant and equipment—buildings and machinery and equipment used in carrying on operations—shall be applied by formula to product or services as a part of overhead costs. The method of allocating depreciation should be one that aims to distribute fairly the cost of plant and equipment over its estimated useful life considering the factors of wear and tear and obsolescence, but not loss of property due to fire or other similar hazards. The straight-line method of depreciation is suggested for use for major property classes and not by individual items. The estimated useful lives and rates of depreciation indicated in Treasury Bulletin "F" may be used as a guide in estimating the cost of depreciation. However, such rates are not always reasonable in application in specific cases. The method and rates used should be explained in comments supporting the cost estimates. The basis for depreciation should be actual costs of the facilities, if available; otherwise in accordance with engineering advice.

(2) No depreciation should be allocated to cost of product for excess plant and equipment when the amounts are significant.

(3) If it is believed necessary to assume that activities already in existence might not be used for any other purpose in the event of procurement of the goods or services from private industry, and the expenses of such activities would go on in any event, a separate statement shall be included with the report setting forth the possibilities regarding alternative uses of the activities with cost estimates showing the amount and nature of fixed charges which are recommended for exclusion from the cost estimates. Consideration will then be given by higher authority to the elimination of such fixed charges for price

comparison purposes consistent with the theory of "sunk" costs in private business, i. e., all fixed costs which result from the maintenance of an organization are not necessarily an element of cost applicable to a particular product in the formulation of a price.

(*c*) Utility services: Utility services such as communication, power, gas, and water, whether or not to be paid directly by the industrial facility, should be costed based on estimates prepared by departmental engineering or other services. Usage should be estimated and predetermined rates established to be applied to estimates of labor or machine-time, space occupied or other appropriate factors.

(*d*) Maintenance and repairs (including protective services):

(1) Operating costs should include cost estimates of maintenance and repairs and protective services for buildings and structures, grounds and equipment. Generally accepted accounting principles should be followed in distinguishing between a capital charge and operating expenses. Thus, all additions and replacements to property will be treated as a capital charge and, therefore, will be included in cost estimates only to the extent of depreciation charges. Costs of maintenance and repairs may be computed at an annual rate per square foot for the type of plant and equipment in accordance with engineering advice.

(2) If desired, occupancy rates equivalent to rentals, may be computed and used in cost estimating to include all maintenance and repairs, depreciation on buildings, protective services, and utilities. This is especially appropriate where only a portion of a building is occupied by the activity.

(*e*) Government's contribution to civil service retirement and disability funds: Cost estimates should include contributions to the civil service retirement system. There are two elements in the annual contribution—the first being amortization of past-service liability over a time period which may be changed every 5 years according to policy; the second element is normal support of the plan plus interest on the unamortized portion. The current normal support based on 1953 appropriations amounts to 2.78 percent of Government payrolls. An approximate rate of 3 percent on civilian personnel services is recommended for use in estimates of cost of product.

(*f*) Injuries and damages paid through the United States Employees Compensation Commission:

(1) Cost of compensation to employees shall be estimated based on previous years' disability and death experience. Accident experience data (including total costs and cost per employee) are reported annually by the Bureau of Employees Compensation, Department of Labor, for each Federal department and agency. For the Department of Defense the data for the Army are reported in total only; for the other military departments data are shown by bureau or command and for selected specific installations.

(2) The estimates shall include compensation plus cost of medical services (generally furnished by Public Health dispensaries) but shall exclude leave cost. Since casualties fluctuate considerably from year to year, the estimate shall be based on the average experience of the most recent 4 years reported for the particular installation, bureau or command or department.

(*g*) Insurance:

(1) Operating costs should include an estimate for insurance for the purpose of arriving at an allocable charge for replacement or repair of plant, equipment, and inventories damaged or destroyed by fire or other hazards. It is not intended that costly independent appraisals of insurable values should be obtained. Based on engineering advice, a percentage factor should be applied to cost of insurable assets to arrive at approximate replacement costs. Annual premium rates prescribed by each department for the various types of buildings and contents may then be applied to the amount of coverage.

(2) In addition to estimates for the equivalent of fire insurance, costs equal to premiums for public liability compensation for bodily injury and property damage should be estimated at payroll rates prescribed by each department in accordance with advice of Government insurance experts and lawyers pursuant to the Federal Torts Claims Act.

(*h*) Property and other taxes:

(1) If and when Government installations are subject to property or other taxes under State and local laws product costs should include an estimate for such payments. Advice of the legal sections of the military departments should be obtained in each case.

(2) Include in cost estimates the Federal Government's share of social security taxes applicable to civilian employees covered thereunder.

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[4100.16 (enclosure 2)—March 8, 1954]

SUBJECT MATTER TO BE INCLUDED IN THE SUMMARY REPORTS OF ANALYSIS OF THE DEPARTMENT OF DEFENSE COMMERCIAL AND INDUSTRIAL FACILITIES (REPORT CONTROL SYMBOL DD–S&L(AR) 140)

1. Type of facility.
2. Name and address of facility.
3. Name and address of organization to which facility is directly responsible.
4. Projected period covered for analysis purpose.
5. Principal products or services to be produced or performed.
6. Indicate whether:
   Government-owned and Government-operated.
   Leased from private enterprise and Government-operated.
7. Personnel to be engaged: Monthly average number:
   Military.
   Civilian.
   Total.
8. Method of financing:
   (*a*) Appropriated funds.
   (*b*) Working capital funds (specify).
   (*c*) Other.
9. Value of facility and plant equipment.
10. Indicate:
   (*a*) Optimum capacity.
   (*b*) Estimated percentage of utilization of optimum capacity.
11. (*a*) Has the feasibility of cross servicing with other similar Federal facilities been investigated?
   (*b*) If *yes*, indicate the similar Federal facility considered:
      Name and address.
      Miles away.
      Comparative size.
12. (*a*) Has the feasibility of obtaining the product(s) or service(s) from similar Government-owned and privately operated or privately owned and operated facilities been investigated?
   (*b*) If *yes*, indicate the private facilities considered:
      Name and address.
      Miles away.
13. Cost data (this portion will be filled out when criterion in paragraph III–b of DOD Directive 4100.15 is used as a justifying factor or whenever requested by a reviewing authority).
   (*a*) Total estimated cost of product or service for projected period. Include supporting cost statement showing details of projected cost estimate and comparison with historical costs, if feasible, in accordance with the principles outlined in enclosure 1 of DOD Instruction No. 4100.16.
   (*b*) Unit costs:
      Name of product or service.
      Subject DOD facility unit cost estimate.
      Price obtained from *similar private facility(ies).
   (*c*) *Name and address of similar privately owned and operated facility(ies) from whom prices obtained.
14. Action to be taken—indicate whether:
   (*a*) Facility discontinue operation on (date).
   Operation to be performed by (name of activity).
   (*b*) Facility continue at current operating level.
   (*c*) Facility continue on modified level as follows.
   (*d*) Facility continue at increased level of operation as follows.
15. Justification for the action indicated in item 14 above.
16. Date of submission of previous analysis.

[4100.16 (enclosure 3)—March 8, 1954]

FIRST INCREMENT OF COMMERCIAL AND INDUSTRIAL FACILITIES TO BE REVIEWED (CONTINENTAL UNITED STATES)

Facilities for which departmental analyses and determinations will be completed within 150 days from the date of this instruction:

Aluminum smelting or sweating facilities are defined as those facilities which are engaged in the process(es) of reducing aluminum scrap into ingots. It does not include a foundry which is a part of an integrated facility and which reclaims aluminum scrap primarily for use in its own operations.

Scrap-metal baling is that process whereby light-metal scrap such as sheet-metal scrap, clippings, skeleton scrap, etc., is compressed by either a portable or stationary press into convenient sizes for sale.

Clothing factory and cloth sponging plant: These are defined as the Army Clothing Factory and Marine Corps Clothing Factory at Philadelphia, Pa.

Coffee roasting plant is a plant capable of roasting, blending, and packaging coffee in accordance with military specifications for issue to an assigned area.

Motion-picture studios are defined as studios operated for the purpose of producing motion-picture films.

Paint factory is a facility similar to the Navy's paint-manufacturing facilities at Norfolk and Mare Island Naval Shipyards which manufacture paint from raw materials for issue in the supply system.

Rope walk is the Navy's facility at Boston Naval Shipyard, which manufactures fiber cordage for issue in the supply system.

Sawmills are facilities which are operated in conjunction with a logging operation. Sawmills take timber from the logging operation and saw logs into rough or finished lumber. Sawmills exclude the operations carried on in a typical carpenter or other woodworking facility which is a part of an integrated activity and is concerned with processing rough or finished lumber in support of the activity's mission.

Facilities for which departmental analyses and determinations will be completed within 1 year from the date of this instruction:

Bakery: A centrally located bakeshop, not a part of the galley or kitchen of a general mess, which supplies bread and pastries to—

(*a*) Messes for consumption; or
(*b*) Commissaries for distribution to messes; or
(*c*) For resale to service personnel as individuals.

Clothing-reclamation shop is a facility which receives a miscellaneous assortment of used and/or issued clothing and inspects, sorts, counts, cleans, washes, renovates, patches, mends, repairs, packages, and repacks this clothing for further issue to the servicewide supply system.

Furniture-repair shops are those facilities operated for the purpose of repairing, mending, refinishing or otherwise rehabilitating furniture for issue to the servicewide supply system.

Ice-cream-manufacturing plant: A facility which manufactures ice cream for messes for consumption or for commissaries for issue to messes or sale to military personnel as individuals. Excepted is the occasional ice cream made in organized messes with equipment normally furnished to galleys or kitchens.

Laundries and/or dry-cleaning plants are defined as those fixed-type facilities which are operated for the purpose of washing, steaming or otherwise cleaning textile products similar to services performed by commercial facilities for the general public.

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